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COURTS OF JUSTICE ACT

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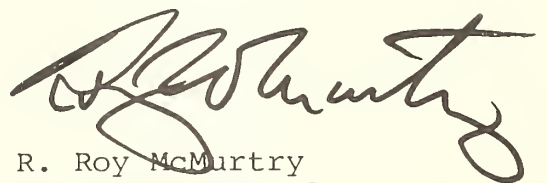
COURTS OF JUSTICE ACT

Foreword

On March 31, 1983, the Ministry of the Attorney General published a discussion draft of a proposed Courts of Justice Act. I had originally intended to introduce legislation by the end of June, but was unable to do so because of the adjournment of the Legislature on June 21. The revised draft in this booklet contains changes made since the publication of the original draft.

I am anxious to proceed quickly with a bill based on this revised draft when the Legislature resumes in October. In order to be considered for inclusion in that bill, comments on the revised draft should be received by September 9, 1983. Comments should be sent to the Policy Development Division, Ministry of the Attorney General, 15th Floor, 18 King Street East, Toronto M5C 1C5.

June 28, 1983



R. Roy McMurtry
Attorney General



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**An Act to revise and consolidate
the Law respecting the Organization, Operation
and Proceedings of Courts of Justice in Ontario**

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HER MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of
Ontario, enacts as follows:

Interpretation

1. In this Act,

- (a) "action" means a civil proceeding that is not an application and includes a proceeding commenced in the Supreme Court or the District Court by,
 - (i) statement of claim,
 - (ii) notice of action,
 - (iii) counterclaim,
 - (iv) crossclaim,
 - (v) third or subsequent party claim,
or
 - (vi) divorce petition or
counterpetition,and a proceeding commenced in the Provincial Court (Civil Division) by claim;
- (b) "application" means a civil proceeding in the Supreme Court or the District Court that is commenced by notice of application or a civil proceeding in the Unified Family Court, a surrogate court or the Provincial Court (Family Division) that is commenced by application;
- (c) "defendant" means a person against whom an action is commenced;
- (d) "hearing" includes a trial;
- (e) "motion" means a motion in the course of a proceeding or an intended proceeding;
- (f) "order" includes a judgment or decree;

- (g) "plaintiff" means a person who commences an action;
- (h) "Rules of Civil Procedure" means the rules for the Supreme Court and the District Court made under Part V.

PART I

SUPREME COURT OF ONTARIO

Organization

Supreme Court

2.-(1) The Supreme Court of Ontario is continued as a superior court of record having civil and criminal jurisdiction, with all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario.

Branches

(2) The Supreme Court shall continue to consist of two branches, the Court of Appeal for Ontario and the High Court of Justice for Ontario.

R.S.O.1980,c.223,ss.2,3.

Court of Appeal

3.-(1) The Court of Appeal shall consist of the Chief Justice of Ontario, who shall be president of the court, the Associate Chief Justice of Ontario and fourteen other judges to be called justices of appeal.

Absence of Chief Justice

(2) Where the Chief Justice of Ontario is absent from Ontario or is for any reason unable to act, the powers and duties of the Chief Justice as president of the Court of Appeal shall be exercised

and performed by the Associate Chief Justice of Ontario or, where both are absent or unable to act, by the senior justice of appeal who is present and able to act. R.S.O.1980,c.223,s.4.

High Court

4.-(1) The High Court shall consist of the Chief Justice of the High Court, who shall be president of the court, the Associate Chief Justice of the High Court and such number of other judges as is fixed under subsection (2). R.S.O.1980, c.223,s.5(1).

Number of judges

(2) The Lieutenant Governor in Council may by regulation fix the number of judges of the High Court who are in addition to the Chief Justice and Associate Chief Justice, but where the number is reduced by regulation, the reduction shall not be applied to affect appointments existing at the time of the reduction. 1981,c.23,s.2(2).

Absence of Chief Justice

(3) Where the Chief Justice of the High Court is absent from Ontario or is for any reason unable to act, all the powers and duties of the Chief Justice of the High Court shall be exercised and performed by the Associate Chief Justice of the High Court or, where both are absent or unable to act, by the senior judge of the High Court who is present and able to act. R.S.O.1980,c.223,s.5(2).

Divisional
Court

5.-(1) There shall be a division of the High Court to be known as the Divisional Court of the High Court of Justice for Ontario consisting of the Chief Justice of the High Court who shall be president of the court and such other judges of the Divisional Court as may be designated by him from time to time.

Jurisdiction
of judges

(2) Every judge of the High Court is also a judge of the Divisional Court. R.S.O.1980,c.223, s.7.

Additional
judges

6.-(1) For each of the offices of Chief Justice of Ontario and Associate Chief Justice of Ontario there shall be such additional offices of judges of the Court of Appeal as are from time to time required to be held by Chief Justices of Ontario and Associate Chief Justices of Ontario who have elected under the Judges Act (Canada) to perform only the duties of a judge of the Court of Appeal.

R.S.C.1970,
c.J-1

Idem

(2) For each of the offices of Chief Justice of the High Court and Associate Chief Justice of the High Court there shall be such additional offices of judge of the High Court as are from time to time required to be held by Chief Justices of the High Court and Associate Chief Justices of the High Court who have elected under the Judges Act (Canada) to perform only the duties of a judge of that court. New.

Supernumerary
judges

(3) For each office of judge of the Court of Appeal and of the High Court of Justice there shall be the additional office of supernumerary judge held by a judge of such court who has elected under the Judges Act (Canada) to hold office only as a supernumerary judge of that court. R.S.O.1980, c.223,s.6.

R.S.C.1970,
c.J-1

Rank and
precedence

7.-(1) The judges of the Supreme Court have rank and precedence as follows:

1. The Chief Justice of Ontario.
2. The Chief Justice of the High Court.
3. The Associate Chief Justice of Ontario.
4. The Associate Chief Justice of the High Court.
5. The other judges of the Supreme Court, according to seniority of appointment. R.S.O.1980,c.223,s.8.

Justice of
Appeal

(2) Among themselves, the judges of the Court of Appeal have rank and precedence, after the Chief Justice of Ontario and the Associate Chief Justice of Ontario, according to seniority of appointment to the Court of Appeal. New.

Jurisdiction
of judges

8. A judge appointed to the Court of Appeal or the High Court is a judge of the Supreme Court and, by virtue of his or her office, a judge of the branch of which he or she is not a member and, except as otherwise provided, all judges of the

Supreme Court have equal jurisdiction, power and authority. R.S.O.1980,c.223,s.9.

Assignment of
judges to
another court

9.-(1) The Chief Justice of Ontario may assign a judge of the Court of Appeal to perform, in Toronto, the work of a judge of the High Court.

Idem

(2) The Chief Justice of Ontario, with the concurrence of the Chief Justice of the High Court, may assign a judge of the High Court to sit as a member of the Court of Appeal. R.S.O.1980,c.223, s.42(1,2).

Council
of judges

10.-(1) A council of the judges of the Supreme Court shall be held in Toronto at least once in each year, on a day fixed by the Chief Justice of Ontario, for the purpose of considering this Act, the Rules of Civil Procedure and the administration of justice generally.

Recommendations

(2) The judges shall report their recommendations to the Attorney General.
R.S.O.1980,c.223,s.118(1,2).

Local judges

11.-(1) Every District Court judge may be appointed as a local judge of the High Court.

Jurisdiction

(2) Every local judge has the jurisdiction in respect of motions and applications in the Supreme Court that is conferred by the Rules of Civil Procedure.

Idem (3) Subject to the Rules of Civil Procedure, every local judge has all the jurisdiction of a judge of the High Court in proceedings under the Divorce Act (Canada) and, where a claim for other relief is joined in a petition for divorce, a local judge has the same jurisdiction in respect of the claim as a judge of the High Court.

R.S.C.1970,
c.D-8

Idem (4) A local judge may act in any county or district. R.S.O.1980,c.223,s.121.

Jurisdiction

High Court jurisdiction 12.-(1) Unless otherwise provided, proceedings in the Supreme Court shall be in the High Court.
New.

Appeals to High Court (2) Subject to the Divorce Act (Canada), an appeal lies to the High Court from,

R.S.C.1970,
c.D-8

- (a) an interlocutory order of a master;
- (b) an interlocutory order of a local judge of the High Court, where the order could have been made by a master;
- (c) a certificate of assessment of costs issued in a proceeding in the Supreme Court, where the appeal is on an issue in respect of which an objection was served under the Rules of Civil Procedure. New.

Composition of court for hearings 13.-(1) Unless otherwise provided by statute or the Rules of Civil Procedure, every proceeding in the High Court shall be heard and determined by one judge.

Sittings

(2) The sittings of the High Court and the assignment of judges thereto shall be determined by the judges of the High Court, with power in the Chief Justice of the High Court to make such readjustment or reassignment as is necessary from time to time. R.S.O.1980,c.223,s.45(1-3).

Idem

(3) The powers of the judges of the High Court under subsection (2) may be exercised by a committee of the judges. R.S.O.1980,c.223, s.119(1).

Idem

(4) At least two sittings of the High Court shall be held in each year in every county and district but, when the trial list for a sitting of the High Court does not have a sufficient number of cases to justify a separate sitting, the sitting may be transferred to an adjacent county or district. R.S.O.1980,c.223,s.48(6).

Divisional
Court
jurisdiction

14.-(1) Subject to the Divorce Act (Canada), an appeal lies to the Divisional Court from,

R.S.C.1970,
c.D-8

(a) a final order of a judge or local judge of the High Court,

(i) for the payment of a lump sum of not more than \$25,000, exclusive of interest and costs, or

(ii) for periodic payments which, together with the amount of any lump sum ordered, amount to not more than \$25,000, exclusive of interest and costs, in the twelve months following the date of the order;

- (b) an interlocutory order of a judge of the High Court, with leave as provided in the Rules of Civil Procedure, other than an order made on an appeal from the District Court;
- (c) an interlocutory order of a local judge of the High Court, with leave as provided in the Rules of Civil Procedure, other than an order that could have been made by a master;
- (d) a final order of a master;
- (e) a final order of a local judge of the High Court, where the order could have been made by a master. R.S.O.1980, c.223,s.17.

Combining of
appeals lying
to High Court

(2) Where an appeal in a proceeding lies to the High Court and an appeal in the same proceeding lies to and is taken to the Divisional Court, the Divisional Court has jurisdiction to hear and determine the appeal that lies to the High Court at the same time as the appeal to the Divisional Court. New.

Composition
of court for
hearings

15.-(1) Unless otherwise provided, every proceeding in the Divisional Court shall be heard and determined by three judges sitting together.

Idem

(2) A proceeding in the Divisional Court may be heard and determined by one judge where the proceeding,

- (a) is an appeal under clause 14(1)(d) or (e);
- (b) is an appeal under section 84; or

- (c) is in a matter that the Chief Justice of the High Court or a judge designated by the Chief Justice is satisfied, from the nature of the issues involved and the necessity for expedition, can and ought to be heard and determined by one judge. R.S.O.1980,c.223,s.46.

Idem (3) A motion in an application or appeal in the Divisional Court, except a motion for leave to appeal, may be heard and determined by one judge, but,

- (a) the judge may adjourn the motion to a panel of the Divisional Court;
- (b) where the motion is heard by one judge, a panel of the Divisional Court may, on motion, set aside or vary the decision of the judge. R.S.O.1980,c.223,s.40.

Sittings (4) Sittings of the Divisional Court shall be held at such times and in such places as the Chief Justice of the High Court directs. R.S.O.1980, c.223,s.46(4).

Court of Appeal jurisdiction 16.-(1) An appeal lies to the Court of Appeal from,

- (a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave as provided in the Rules of Civil Procedure;
- (b) a final order of a judge of the High Court, except an order referred to in clause 14(1)(a);
- (c) a final order of a local judge of the High Court, except an order referred to in clause 14(1)(a) or where the order could have been made by a master. R.S.O.1980,c.223,s.28(1).

Combining of
appeals lying
to other courts

(2) Where an appeal in a proceeding lies to the Divisional Court or High Court, and an appeal in the same proceeding lies to and is taken to the Court of Appeal, the Court of Appeal has jurisdiction to hear and determine the appeal that lies to the Divisional Court or High Court at the same time as the appeal to the Court of Appeal.

New.

Composition
of court for
hearings

17.-(1) Unless otherwise provided, every proceeding in the Court of Appeal shall be heard and determined by not fewer than three judges sitting together, and always by an uneven number of judges.

Idem

R.S.C.1970,
c.D-8

(2) An appeal to the Court of Appeal from an interim order under section 10 of the Divorce Act (Canada) may be heard and determined by one judge, unless it is to be heard with an appeal that, but for subsection 16(2), would have been heard by three judges of the Divisional Court. R.S.O.1980, c.223,s.41.

Idem

(3) A motion in an appeal to the Court of Appeal, except a motion for leave to appeal, may be heard and determined by one judge, but,

- (a) the judge may adjourn the motion to a panel of the Court of Appeal;
- (b) where the motion is heard by one judge, a panel of the Court of Appeal may, on motion, set aside or vary the decision of the judge. R.S.O.1980,c.223,s.33.

Presiding
judge

(4) The senior judge on a panel of the Court of Appeal shall preside but, where the senior judge is a supernumerary judge, the Chief Justice of Ontario, on the request of the senior judge, may designate another judge to preside. R.S.O.1980, c.223,s.44.

Sittings

(5) The Chief Justice of Ontario has general supervision and direction over the sittings of the Court of Appeal and the assignment of the judicial duties of the court. R.S.O.1980,c.223,s.41(4).

References to
Court of Appeal

18.-(1) The Lieutenant Governor in Council may refer any question to the Court of Appeal for hearing and consideration.

Opinion of
court

(2) The court shall certify its opinion to the Lieutenant Governor in Council, accompanied by a statement of the reasons therefor, and any judge who differs from the opinion may in like manner certify his or her opinion and reasons.

Submissions
by Attorney
General

(3) On the hearing of the question, the Attorney General of Ontario is entitled to make submissions to the court.

Idem

(4) Where a question relates to the constitutional validity or constitutional applicability of an enactment of the Parliament of Canada or the Legislature, or of a regulation or by-law made thereunder, the Attorney General of

Canada shall be notified and is entitled to make submissions to the court.

Notice

(5) The court may direct that any person interested, or any one or more persons as representatives of a class of persons interested, be notified of the hearing and be entitled to make submissions to the court.

Appointment of counsel

(6) Where an interest affected is not represented by counsel, the court may request counsel to argue on behalf of the interest, and the reasonable expenses thereof shall be paid by the Treasurer of Ontario.

Appeal

(7) The opinion of the court shall be deemed to be a judgment of the court and an appeal lies therefrom as from a judgment in an action. R.S.O. 1980, c.86.

Officers

Masters

19.-(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such masters of the Supreme Court as are considered necessary. R.S.O.1980,c.223,s.96(1).

Qualifications

(2) No person shall be appointed as a master unless he or she has been a member of the bar of one of the provinces of Canada for at least ten years.

Jurisdiction

(3) Every master has the jurisdiction conferred by the Rules of Civil Procedure. New.

Regulations

(4) The Lieutenant Governor in Council may make regulations,

- (a) fixing the remuneration of masters;
- (b) providing for the benefits to which masters are entitled, including,
 - (i) leave of absence and vacations,
 - (ii) sick leave credits and payments in respect of such credits,
 - (iii) pension benefits for masters and their surviving spouses and children,

R.S.O.1980,
cc.418,419

and for the transfer or other disposition of benefits in respect thereof to which persons appointed as masters under this section were entitled under the Public Service Act or the Public Service Superannuation Act at the time of their appointment under this section or a predecessor thereof.
R.S.O.1980,c.223,s.100(1).

Senior Master

(5) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a master as Senior Master.

Duties

(6) The Senior Master has general supervision and direction over the sittings of the masters and the assignment of their judicial duties.

Temporary appointments

(7) The Attorney General may designate a master to act in the place of the Senior Master for all purposes during his or her absence or inability to act. R.S.O.1980,c.223,s.99.

Application of ss.53-60,65

(8) Sections 53 to 60 and section 65 apply with necessary modifications to masters and the Senior

Master in the same manner as to provincial judges and a chief judge, respectively. R.S.O.1980,c.223, ss.96(2-4),97,98,100(2,3).

Registrar

20.-(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a Registrar of the Supreme Court of Ontario.

Local registrars

(2) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a local registrar of the Supreme Court for each county and district. New.

Deputy local registrars

(3) With the approval of the Attorney General, every local registrar may appoint in writing a deputy local registrar who may exercise and perform all the powers and duties of the local registrar. R.S.O.1980,c.223,s.85.

Accountant

21.-(1) The Accountant of the Supreme Court is continued as a corporation sole by the name of "Accountant of the Supreme Court of Ontario".

Appointment

(2) The Lieutenant Governor in Council may appoint the Accountant of the Supreme Court.

Money vested in Accountant

(3) Money paid into the Supreme Court shall be paid to the Accountant and such money and securities in which the money is invested are vested in the Accountant. R.S.O.1980,c.223, s.110(1,2).

Security
held by
Accountant

(4) Mortgages and other securities taken under an order of the Supreme Court and instruments taken as security in respect of a proceeding in the Supreme Court shall be taken in the name of the Accountant and shall be deposited in his or her office, except where an order provides otherwise.

Idem

(5) Subject to an order of the court, the Accountant has no duty or obligation in respect of the instruments deposited under subsection (4) except as custodian of the instruments. New.

Audit by
Provincial
Auditor

(6) The Provincial Auditor shall examine and report on the accounts and financial transactions of the Accountant. R.S.O.1980,c.223,s.115.

Finance
committee

22.-(1) The finance committee is continued and shall be composed of three persons appointed by the Lieutenant Governor in Council.

Management of
court funds

(2) The finance committee has control and management of the money in the Supreme Court, the investment of the money and the securities in which it is invested.

Investment of
court funds

(3) Money that is available for investment shall be invested in investments in which the Treasurer of Ontario may invest public money under section 3 of the Financial Administration Act.

R.S.O.1980,
c.161

Employment of
trust company

(4) The finance committee may employ a trust company to make the investments or act as custodian of the securities purchased as investments.

Interest (5) The finance committee may provide for the payment of interest on money paid into the Supreme Court and may fix the rate of interest so paid.

Reserve funds (6) The finance committee may establish such reserve funds as it considers necessary.
R.S.O.1980,c.223,s.111.

Other Officers 23. In addition to the officers specifically provided for in this Act, the Lieutenant Governor in Council on the recommendation of the Attorney General, may appoint such officers of the Supreme Court as are considered necessary. R.S.O.1980, c.223,s.83(1).

PART II

DISTRICT COURT OF ONTARIO

Organization

District Court 24.-(1) The county and district courts are amalgamated and continued as a single court of record having civil and criminal jurisdiction, named the District Court of Ontario.
R.S.O.1980,c.100,s.2.

Judge to preside (2) The District Court shall be presided over by a judge of the court. R.S.O.1980,c.100,s.3.

Judges 25.-(1) The District Court shall consist of the Chief Judge of the District Court, who shall be president of the court, the Associate Chief Judge

of the District Court, a senior judge for each county or district designated under clause (2)(b) and such number of other judges as is fixed under clause (2)(a). R.S.O.1980,c.101,s.1.

Regulations

(2) The Lieutenant Governor in Council may make regulations,

- (a) fixing the number of judges of the court who are in addition to the Chief Judge, Associate Chief Judge and senior judges, but where the number is reduced by regulation, the reduction shall not be applied to affect appointments existing at the time of the reduction;
- (b) designating counties and districts to which more than one judge shall be assigned; and
- (c) establishing regions for the purposes of this Part. R.S.O.1980,c.101,s.4(1).

County or district judges presiding in District Court

(3) A judge of a county or district court may preside as a judge of the District Court.

Rights and privileges of judges preserved

(4) Nothing in this Part affects the rights or privileges of a judge who was appointed as a judge of a county or district court before this Part comes into force.

Chief Judge

26.-(1) The Chief Judge of the District Court has general supervision and direction over the sittings of the court and the assignment of the judicial duties of the court. R.S.O.1980,c.101,s.15(4).

Assignment of judges

(2) At least one judge of the District Court shall be assigned by the Chief Judge to each county and district.

Absence of
Chief Judge

(3) Where the Chief Judge is absent from Ontario or is for any reason unable to act, all the powers and duties of the Chief Judge shall be exercised and performed by the Associate Chief Judge or, where both are absent or unable to act, by a judge designated by the Chief Judge. New.

Senior judges

27.-(1) The senior judge of a county or district shall, subject to the authority of the Chief Judge, direct and supervise the sittings of the court in the county or district and the assignment of the judicial duties of the court in the county or district. R.S.O.1980,c.101,s.7.

Idem

(2) A judge who, on the coming into force of this Part, was a senior judge of a county or district court under subsection 2(2) of the County Judges Act, being chapter 101 of the Revised Statutes of Ontario, 1980, may, subject to the authority of the Chief Judge, direct and supervise the sittings of the District Court in the county or district and the assignment of the judicial duties of the District Court in the county or district. New.

Annual meeting
in regions

(3) For the purposes of arranging the sittings of the District Court and considering matters relating to the court and the judges, the Chief Judge shall convene a meeting of the judges of each region at least once in every year. R.S.O.1980, c.101,s.16(5).

Additional
judges

28.-(1) For each of the offices of Chief Judge of the District Court and Associate Chief Judge of the District Court, there shall be such additional offices of judge of the District Court as are from time to time required to be held by Chief Judges and Associate Chief Judges who have elected under the Judges Act (Canada) to perform only the duties of a judge of the court. New.

R.S.C.1970,
c.J-1

Supernumerary
judges

(2) For each office of judge of the District Court, there shall be the additional office of supernumerary judge held by a judge of the court who has elected under the Judges Act (Canada) to hold office only as a supernumerary judge of the court. R.S.O.1980,c.101,s.5(1).

Rank and
precedence

29. The judges of the District Court have rank and precedence as follows:

1. The Chief Judge of the District Court.
2. The Associate Chief Judge of the District Court.
3. The other judges of the District Court, according to seniority of appointment.
R.S.O.1980,c.101,s.6.

Annual meeting

30.-(1) A meeting of the judges of the District Court shall be held in Toronto at least once in every year, on a day fixed by the Chief Judge of the District Court, for the purpose of considering this Act, the Rules of Civil Procedure and the

administration of justice generally. R.S.O.1980,
c.101,s.16(8).

Recommendations (2) The judges shall report their
recommendations to the Attorney General. New.

Jurisdiction

Jurisdiction 31.-(1) The District Court has jurisdiction to
hear and determine any action except,

- (a) where the sum claimed or the value of
the property that is the subject of the
action exceeds \$25,000, exclusive of
interest and costs; or
- (b) where another court is specified by
statute to hear and determine the
action.

Idem (2) The District Court does not have
jurisdiction to grant prerogative remedies.
R.S.O.1980,c.100,s.14(1).

Dispute of
monetary
jurisdiction 32.-(1) A defendant who disputes the
jurisdiction of the District Court on the ground
that the monetary limit mentioned in clause
31(1)(a) has been exceeded shall do so in the
statement of defence.

Transfer or
abandonment
of excess by
plaintiff (2) Where a defendant disputes the monetary
jurisdiction of the District Court in accordance
with subsection (1), the plaintiff may, within
fifteen days after the filing of the statement of
defence,

- (a) on requisition to the local registrar of
the District Court, require the action

to be transferred to the Supreme Court;
or

- (b) abandon the amount of the claim in excess of the monetary limit by serving and filing a notice abandoning the excess, in which case the plaintiff is not entitled to recover the excess in any other proceeding.

Transfer by
defendant

(3) Where the plaintiff does not take one of the steps permitted by subsection (2), the defendant may, within thirty days after the filing of the statement of defence,

- (a) where the only claim is for money, on requisition to the local registrar of the District Court, require the action to be transferred to the Supreme Court;
or
- (b) in any other case, make a motion to a judge of the High Court for an order transferring the action to the Supreme Court on the ground that the action is beyond the monetary jurisdiction of the District Court.

Jurisdiction
conclusive

(4) Where,

- (a) the monetary jurisdiction of the court is not disputed under subsection (1);
- (b) the plaintiff and the defendant fail to take the steps permitted by subsections (2) and (3); or
- (c) a motion under clause (3)(b) is dismissed,

the District Court has the monetary jurisdiction to hear and determine the action. R.S.O.1980,c.100, s.14(2-5).

Continuation in
Supreme Court

(5) An action that is transferred to the Supreme Court under this section shall be titled in the

Supreme Court and shall be continued as if it had been commenced in the Supreme Court. R.S.O.1980, c.100,s.16.

Counterclaims,
etc.

(6) This section applies with necessary modifications to a counterclaim, crossclaim, third or subsequent party claim or a defence of set off, in which a claim is made in excess of a monetary limit mentioned in clause 31(1)(a). R.S.O.1980, c.100,s.15.

Transfer of
all claims in
main action

(7) Where an action is transferred to the Supreme Court under this section, any counterclaim, crossclaim or third or subsequent party claim in the action shall also be transferred, and where a counterclaim, crossclaim or third or subsequent party claim is transferred to the Supreme Court under this section, the main action and any other counterclaim, crossclaim or third or subsequent party claim in the main action shall also be transferred. New.

Transfer from
Supreme Court to
District Court

33.-(1) An action in the Supreme Court may be transferred to the District Court by the local registrar of the Supreme Court in the county or district where the action was commenced, upon requisition with the consent of all parties filed before the trial commences.

Idem,
by order

(2) On motion to a judge of the High Court made before the trial commences, an action in the Supreme Court may be transferred to the District Court where it appears that the amount of a judgment in the action will be, or the value of property that is the subject of the action is, within the monetary jurisdiction of the District Court.

Conduct of
transferred
proceeding

(3) Where an action is transferred to the District Court under this section,

- (a) the court has the monetary jurisdiction to hear and determine the action; and
- (b) the action shall be titled in the District Court and shall be continued as if it had been commenced in that court.
New.

Powers of
Court

34.-(1) With respect to any matter within its jurisdiction, the District Court has the same powers as the Supreme Court to conduct its proceedings, grant remedies and enforce its orders and other process. R.S.O.1980,c.100,ss.20,26.

Contempt
of court

(2) The District Court may punish by fine or imprisonment, or by both, a wilful contempt of or resistance to its process, rules or orders, but the fine shall not in any case exceed \$10,000 nor shall the imprisonment exceed six months. R.S.O.1980, c.100,s.27.

Appeal from
final orders

35.--(1) An appeal from a final order of a judge of the District Court, except an order referred to in subsection (2), lies to the Court of Appeal.
R.S.O.1980,c.100,ss.31,34.

Appeal to
Divisional
Court

(2) An appeal lies to the Divisional Court from a final order of a judge of the District Court,

- (a) for the payment of a lump sum of not more than \$25,000, exclusive of interest and costs; or
- (b) for periodic payments which, together with the amount of any lump sum ordered, amount to not more than \$25,000, exclusive of interest and costs, in the twelve months following the date of the order.

Appeal from
interlocutory
orders

(3) An appeal from an interlocutory order of a judge of the District Court lies to the High Court.
R.S.O.1980,c.100,s.40.

Appeal from
assessment
of costs

(4) An appeal from a certificate of assessment of costs issued in a proceeding in the District Court, where the appeal is on an issue in respect of which an objection was served under the Rules of Civil Procedure, lies to the High Court. New.

Officers

Local
registrars

36.--(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a local registrar of the District Court for each county and district. R.S.O.1980,c.100,s.4(1).

Deputy local
registrar

(2) With the approval of the Attorney General, every local registrar of the District Court may appoint in writing a deputy local registrar who may exercise and perform all the powers and duties of the local registrar. R.S.O.1980,c.223,s.85.

PART III

UNIFIED FAMILY COURT

Unified
Family Court

37. The Unified Family Court is continued as a court of record in and for the Judicial District of Hamilton-Wentworth. R.S.O.1980,c.515,s.2.

Jurisdiction
of judges

38.--(1) The Unified Family Court shall be presided over by a judge of the District Court who is a local judge of the High Court and who is authorized under subsection (2) to exercise the jurisdiction of a judge of the Provincial Court (Family Division). R.S.O.1980,c.515,s.3(1,6).

Authority for
family court
matters

(2) The Lieutenant Governor in Council may authorize a judge of the District Court who is a local judge of the High Court to exercise the jurisdiction of a judge of the Provincial Court (Family Division). R.S.O.1980,c.515,s.3(2,6).

Jurisdiction
of local judge
of High Court

(3) All the jurisdiction of the Supreme Court or a judge thereof under the statutory provisions set out in the Schedule to this Part, other than by way of appeal, may be exercised by a local judge of the High Court who is a judge who may preside over the

Unified Family Court. R.S.O.1980,c.515,s.3(3);
1982,c.21,s.1.

Exercise of
existing
jurisdiction

(4) A judge who may preside over the Unified Family Court shall exercise his or her jurisdiction as a local judge of the High Court, a judge of the District Court, or a judge of the Provincial Court (Family Division) in the matters in which the Supreme Court, the District Court, or the Provincial Court (Family Division) or a judge thereof has jurisdiction under the statutory provisions set out in the Schedule to this Part. R.S.O.1980,c.515,s.3(4,6).

Proceedings
in Unified
Family Court

39.-(1) Proceedings taken in a court in the Judicial District of Hamilton-Wentworth under the statutory provisions set out in the Schedule to this Part, other than by way of appeal, shall be commenced and titled in the Unified Family Court and the jurisdiction of the court shall be exercised in the Unified Family Court. R.S.O.1980, c.515,s.4(1).

Idem

R.S.C.1970,
c.D-8;
R.S.O.1980,
cc.152,68

(2) A motion for interim relief under the Divorce Act (Canada), the Family Law Reform Act or the Children's Law Reform Act in a proceeding in the Supreme Court or District Court that is required by the Rules of Civil Procedure or an order of the court to be heard in the Judicial

District of Hamilton-Wentworth, shall be heard in the Unified Family Court. New.

Parens
patriae
powers

(3) The court has and may exercise the same parens patriae powers as the Supreme Court in respect of any matter before it. R.S.O.1980,c.515, s.4(3).

No jury

(4) All proceedings commenced in or transferred to the Unified Family Court shall be heard and determined without a jury. R.S.O.1980,c.515, s.7(2).

Consent to
jurisdiction

40. Where a proceeding is commenced in the Unified Family Court in a matter over which jurisdiction may be exercised in the Unified Family Court and is combined with a related matter in the jurisdiction of the judge but respecting which jurisdiction may not be exercised in the Unified Family Court, the court may, with leave of the judge and the consent of the parties, hear and determine the combined matters. R.S.O.1980,c.515, s.5.

Orders of
predecessor
court

R.S.O.1980,
c.152

41.-(1) The Unified Family Court may hear and determine an application under the Family Law Reform Act to discharge, vary or suspend an order made by the Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth. R.S.O.1980,c.515,s.6(1).

Enforcement

(2) The Unified Family Court may enforce orders made by the Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth. R.S.O.1980,c.515,s.23(3).

Powers

42.-(1) In all proceedings in which jurisdiction may be exercised in the Unified Family Court, the court has the same powers as the Supreme Court to conduct its proceedings, grant remedies and enforce its orders and other process. R.S.O.1980,c.515, s.8(1).

Contempt

(2) The Unified Family Court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders, or to an order of the Supreme Court or the County Court of the Judicial District of Hamilton-Wentworth made before the 1st day of July, 1977 in a matter that is in the jurisdiction of the Unified Family Court, but the fine shall not in any case exceed \$10,000 nor shall the imprisonment exceed six months. R.S.O.1980,c.515,s.12(1); 1982,c.21, s.5.

Application
of R.S.O.1980,
c.103,s.4(3)

(3) Subsection 4(3) of the Creditors' Relief Act applies to a garnishment issued by the Unified Family Court. 1982,c.21,s.3(2).

Place where
proceedings
commenced

43.-(1) Subject to subsection (2), proceedings referred to in section 39 may be commenced in the Unified Family Court where the applicant or the respondent resides in the Judicial District of Hamilton-Wentworth. R.S.O.1980,c.515,s.9(1); 1982,c.21,s.4(1).

Application
under Part III

R.S.O.1980,
c.68

(2) An application under Part III of the Children's Law Reform Act in respect of a child who ordinarily resides in the Judicial District of Hamilton-Wentworth may be commenced in the Unified Family Court. 1982,c.21,s.4(2).

Transfer to
other court

(3) A judge who may preside over the Unified Family Court may, upon motion, order that a proceeding commenced in the Unified Family Court be transferred to the appropriate court in a place where there is no Unified Family Court where, in the opinion of the judge, there is a preponderance of convenience for the matter to be dealt with by that court.

Transfer from
other court

(4) A judge of a court having jurisdiction in a matter referred to in section 39 in a county or district other than the Judicial District of Hamilton-Wentworth may, upon motion, order that the proceeding in the matter be transferred to the Unified Family Court where, in the opinion of the judge, there is a preponderance of convenience for the matter to be dealt with by that court.

Directions
and costs

(5) A judge making an order under subsection (3) or (4) may give such directions for the transfer as are considered just. R.S.O.1980,c.515,s.9(2-4).

Status of
orders

44. An order of a judge presiding over the Unified Family Court made in the exercise of his or her jurisdiction as a local judge of the High Court or a judge of the District Court is an order of the Supreme Court or the District Court, respectively, for all purposes. R.S.O.1980,c.515, s.14.

Appeals

45.-(1) Subject to subsection (2), a provision for an appeal from an order made under the statutory provisions set out in the Schedule to this Part applies to the order when made in the exercise of the jurisdiction by a judge presiding over the Unified Family Court.

Idem

(2) Where an order made by the Unified Family Court under a statutory provision set out in the Schedule to this Part is within the jurisdiction of the Supreme Court or the District Court outside the Judicial District of Hamilton-Wentworth, the order shall, for the purposes of an appeal, be deemed to have been made by a judge of the High Court. New.

Idem

(3) A provision for an appeal to the District Court or a judge thereof from an order that is made by the Unified Family Court under the statutory provisions set out in the Schedule to this Part

Part shall be deemed to provide for an appeal to the High Court. R.S.O.1980,c.515,s.15(1,2).

Idem

(4) Where no provision is made for an appeal from an order of a judge presiding over the Unified Family Court, an appeal lies,

(a) to the Court of Appeal from a final order, except a final order referred to in clause (b);

(b) to the Divisional Court from a final order,

i. for the payment of a lump sum of not more than \$25,000, exclusive of interest and costs, or

ii. for periodic payments which, together with the amount of any lump sum ordered, amount to not more than \$25,000, exclusive of interest and costs, in the twelve months following the date of the order;

(c) to the High Court from an interlocutory order. R.S.O.1980,c.515,s.15(3).

Criminal
jurisdiction

R.S.C.1970,
c.C-34

46. A judge presiding over the Unified Family Court has all the powers of a magistrate under the Criminal Code (Canada) for the purposes of proceedings under the Criminal Code (Canada) and the Unified Family Court,

(a) has jurisdiction to deal with juvenile delinquents; and

(b) has jurisdiction to try a child charged with an offence against the laws of Ontario. R.S.O.1980,c.515,s.16.

Clerk

47. A clerk of the Unified Family Court shall

R.S.O.1980,
c.418

be appointed for the court under the Public Service Act. R.S.O.1980,c.515,s.17.

Conciliation
service

48. A conciliation service may be established, maintained and operated as part of the Unified Family Court. R.S.O.1980,c.515,s.18.

Powers of
probation
officers

49. Every probation officer appointed for the Unified Family Court has, while acting in the discharge of his or her duties, all the powers of a police constable. R.S.O.1980,c.515,s.19.

Regulations

50. The Lieutenant Governor in Council may make regulations,

- (a) specifying the returns to be made by the Unified Family Court;
- (b) providing for a system of recording and transcribing evidence before the Unified Family Court;
- (c) providing for the appointment and employment of court reporters and fixing their fees, expenses and other forms of remuneration;
- (d) prescribing the functions of and providing for a conciliation service under this Part;
- (e) prescribing the duties of the officers and employees of the Unified Family Court or of any class of such officers or employees;
- (f) providing for a system of statistical records relating to the Unified Family Court. R.S.O.1980,c.515,s.22.

Rules

51.-(1) The Lieutenant Governor in Council may make rules for the Unified Family Court in relation

to the practice and procedure of the court and may make rules for the court, even though they alter or conform to the substantive law, in relation to,

- (a) conduct of proceedings in the court;
- (b) joinder of claims and parties, and representation of parties;
- (c) commencement of proceedings and service of process in or outside Ontario;
- (d) discovery and other forms of disclosure before hearing, including the scope thereof and the use of such discovery and disclosure in a proceeding;
- (e) examination of witnesses in or out of court;
- (f) duties of clerks and other officers;
- (g) references of proceedings or issues in a proceeding and the powers of a person conducting a reference;
- (h) costs of proceedings;
- (i) enforcement of orders and process;
- (j) payment into and out of court;
- (k) any matter that is referred to in an Act as provided for by rules of court,

and, where an Act contains provisions in respect of practice and procedure, the Lieutenant Governor in Council may make rules supplementing those provisions. R.S.O.1980,c.515,s.21.

Idem

(2) The Rules of Civil Procedure and the rules of the Provincial Court (Family Division) do not apply to proceedings in the Unified Family Court.

New.

SCHEDULE

Jurisdiction under the following statutory provisions:

Statutes	Provisions
Annulment of Marriages Act (Ontario) (Canada)	All
Child Welfare Act	Parts II, III and IV
Children's Law Reform Act	All, except Sections 60 and 61
Children's Residential Services Act	Subs. 18(1) except Cls. (a) and (b)
Divorce Act (Canada)	All
Education Act	Sections 29 and 30
Family Law Reform Act	All, except Part V
Juvenile Delinquents Act (Canada)	All
Marriage Act	Sections 6 and 9
Minors' Protection Act	Section 2
Reciprocal Enforcement of Maintenance Orders Act, 1982	All
Training Schools Act	Section 8

R.S.O.1980,c.515,Sched.; 1982,c.20,s.5.

PART IV

PROVINCIAL COURTS

Judges

Appointment
of judges

52.-(1) The Lieutenant Governor in Council, on
the recommendation of the Attorney General, may

appoint such provincial judges as are considered necessary. R.S.O.1980,c.398,s.2.

Qualifications

(2) No person shall be appointed as a provincial judge unless he or she has been a member of the bar of one of the provinces of Canada for at least ten years. New.

Other
employment

53.-(1) A provincial judge shall devote his or her whole time to the performance of his or her duties as a judge, except as authorized by the Lieutenant Governor in Council.

Idem

(2) Notwithstanding subsection (1), a provincial judge who, before the coming into force of this Part, had the consent of the Attorney General to act as an arbitrator, conciliator or member of a police commission may continue to so act.
R.S.O.1980,c.398,s.12.

Retirement

54.-(1) Every provincial judge shall retire upon attaining the age of sixty-five years.

Idem

(2) Notwithstanding subsection (1), a provincial judge appointed as a full-time magistrate, judge of a juvenile and family court or master after the 1st day of July, 1941 and before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years.

Idem

(3) Notwithstanding subsection (1), a provincial judge appointed as a full-time magistrate on or

before the 1st day of July, 1941 shall retire upon attaining the age of seventy-five years.

R.S.O.1980,c.398,s.5(1-3).

Continuation of
judges in office

(4) A judge who has attained the age for retirement under subsection (1) may, subject to the annual approval of the Chief Judge, continue in office as a full-time or part-time judge until he or she attains the age of seventy years, and a judge who has attained the age of seventy years may, subject to the annual approval of the Judicial Council, continue in office as a full-time or part-time judge until he or she has attained the age of seventy-five years.

Continuation
of associate
chief judge and
senior judges
in office

(5) An associate chief judge or senior judge who is in office upon attaining the age for retirement under subsection (1) may, subject to the annual approval of the Chief Judge, continue in that office until he or she has attained the age of seventy years and an associate chief judge or senior judge who has attained the age of seventy years may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years.

Continuation
of chief judge
in office

(6) A chief judge who is in office upon attaining the age for retirement under subsection (1) or (2) may, subject to the annual approval of the Judicial Council, continue in that office until

he or she has attained the age of seventy-five years. R.S.O.1980,c.398,s.5(4,4a,4b); 1983,c.18, s.1.

Resignation

55. A provincial judge may at any time resign from his or her office in writing, signed by the judge and delivered to the Lieutenant Governor. R.S.O.1980,c.398,s.6.

Removal for cause

56.-(1) A provincial judge may be removed from office before attaining retirement age only if,

- (a) a complaint regarding the judge has been made to the Judicial Council; and
 - (b) the removal is recommended by an inquiry held under section 60 on the ground that the judge has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) infirmity,
 - (ii) conduct that is incompatible with the execution of his or her office, or
 - (iii) having failed to perform the duties of his or her office.
- R.S.O.1980,c.398,s.4(1).

Order for removal

(2) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Legislative Assembly. R.S.O.1980,c.398,s.4(3).

Judicial Council

57.-(1) The Judicial Council for Provincial Judges is continued and shall be composed of,

- (a) the Chief Justice of Ontario, who shall preside over the Judicial Council;
- (b) the Chief Justice of the High Court;
- (c) the Chief Judge of the District Court;
- (d) the Chief Judge of the Provincial Court (Criminal Division);
- (e) the Chief Judge of the Provincial Court (Family Division);
- (f) the Chief Judge of the Provincial Court (Civil Division);
- (g) the Treasurer of The Law Society of Upper Canada; and
- (h) not more than two other persons appointed by the Lieutenant Governor in Council. R.S.O.1980,c.398,s.7(1).

Senior Master (2) Where the Judicial Council is considering any matter relating to a master, the Senior Master is entitled to be present and participate as a member of the Council. New.

Quorum (3) A majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Judicial Council.

Staff (4) Such officers and employees of the Judicial Council as are considered necessary may be appointed under the Public Service Act. R.S.O. 1980,c.398,s.7(2,3).

Expert assistance (5) The Judicial Council may engage persons, including counsel, to assist it in its investigations. New.

R.S.O.1980,
c.418

Functions

58.--(1) The functions of the Judicial Council are,

- (a) at the request of the Attorney General, to consider proposed appointments of provincial judges and make a report thereon to the Attorney General;
- (b) to receive and investigate complaints against provincial judges. R.S.O.1980, c.398,s.8(1).

Liability
for damages

(2) No action or other proceeding for damages shall be instituted against the Judicial Council or any member or officer thereof or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his or her duty. R.S.O.1980,c.398,s.8(6).

Investigation
of complaints

59.--(1) Where the Judicial Council receives a complaint against a provincial judge, it shall take such action to investigate the complaint as it considers advisable. R.S.O.1980,c.398,s.8(1)(c).

Referral to
Chief Judges

(2) The Judicial Council may transmit such complaints as it considers appropriate to the Chief Judge of the Provincial Court (Criminal Division), the Chief Judge of the Provincial Court (Family Division), the Chief Judge of the Provincial Court (Civil Division) or the Senior Master, as it considers appropriate. R.S.O.1980,c.398,s.8(2).

Proceedings
not public

(3) The proceedings of the Judicial Council shall not be public, but it may inform the Attorney

General respecting matters that it has investigated and the Attorney General may make public the fact that an investigation has been undertaken.

R.S.O.1980,c.398,s.8(4).

Prohibiting
publication

(4) The Judicial Council may order that information or documents relating to its proceedings not be published or disclosed, except as required by law. New.

Powers

R.S.O.1980,
c.411

(5) The Judicial Council has all the powers of a commission under Part II of the Public Inquiries Act, which Part applies to the investigation as if it were an inquiry under that Act. R.S.O.1980, c.398,s.8(5).

Notice of
disposition

(6) Where the Judicial Council has dealt with a complaint regarding a provincial judge, it shall inform,

(a) the person who made the complaint; and

(b) where the complaint was brought to the attention of the judge, the judge,

of its disposition of the complaint. New.

Report and
recommendations

(7) The Judicial Council may report its opinion regarding the complaint to the Attorney General and may recommend,

(a) that an inquiry be held under section 60;

(b) that the judge be compensated for all or part of the costs incurred by the judge relating to the investigation. R.S.O. 1980,c.398,s.8(3).

Copy to
judge

(8) A copy of a report made under subsection (7) shall be given to the judge.

Right to
be heard

(9) The Judicial Council shall not make a report under subsection (7) unless the judge was notified of the investigation and given an opportunity to be heard and to produce evidence on his or her behalf.

Publication
of report

(10) Where the Judicial Council makes a report to the Attorney General under subsection (7), the Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so. New.

Inquiry

60.-(1) The Lieutenant Governor in Council may appoint a judge of the Supreme Court to inquire into the question whether a provincial judge should be removed from office.

Powers

R.S.O.1980,
c.411

(2) The Public Inquiries Act applies to an inquiry under subsection (1). R.S.O.1980,c.398, s.4(2).

Report

(3) The report of the inquiry may recommend,
(a) that the judge be removed from office;
(b) that the judge be compensated for all or part of the costs incurred by the judge relating to the inquiry. New.

Tabling
of report

(4) The report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next ensuing session. R.S.O.1980,c.398, s.4(3).

Jurisdiction
of judges

61.-(1) Every provincial judge has jurisdiction throughout Ontario and,

- (a) shall exercise all the powers and perform all the duties conferred or imposed on a provincial judge by or under any Act of the Legislature or of the Parliament of Canada;
- (b) subject to subsection (2), may exercise all the powers and perform all the duties conferred or imposed on a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada.
R.S.O.1980,c.398,s.9(1)(a,c).

Idem

(2) A provincial judge shall not exercise the powers or perform the duties of a magistrate under Part XVI of the Criminal Code (Canada) unless,

R.S.C.1970,
c.C-34

- (a) he or she has been a member of the bar of one of the provinces of Canada; or
- (b) he or she has acted as a provincial judge for a period of five years;

and the judge is so designated by the Lieutenant Governor in Council. R.S.O.1980,c.398,s.9(3).

Idem

(3) Every provincial judge is a justice of the peace and commissioner for taking affidavits.
R.S.O.1980,c.398,s.9(1)(d).

Where
procedures
not provided

62. Jurisdiction conferred on a provincial judge, justice of the peace or provincial court shall, in the absence of express provision for procedures therefor in any Act, regulation or rule, be exercised in any manner consistent with the due administration of justice. R.S.O.1980,c.398,
s.9(2).

Chief Judges

63.-(1) The Lieutenant Governor in Council may appoint a provincial judge as Chief Judge of the Provincial Court (Criminal Division), a provincial judge as Chief Judge of the Provincial Court (Family Division) and a provincial judge as Chief Judge of the Provincial Court (Civil Division).

Chief Judge
of Provincial
Offences Court

(2) The Chief Judge of the Provincial Court (Criminal Division) is Chief Judge of the Provincial Offences Court.

Duties of
Chief Judge

(3) Each Chief Judge has general supervision and direction over the sittings of his or her court and the assignment of the judicial duties of the court except that in counties and districts where the Provincial Court (Civil Division) is presided over by a judge of the District Court, the Chief Judge of the District Court and, subject to the authority of the Chief Judge, the senior judge of the District Court in that county or district has general supervision and direction over the sittings of the court and the assignment of the judicial duties of the court.

Associate
Chief Judge

(4) The Lieutenant Governor in Council may appoint a provincial judge as Associate Chief Judge of the Provincial Court (Criminal Division) and a provincial judge as Associate Chief Judge of the Provincial Court (Family Division). R.S.O.1980, c.398,s.10(1-4).

Absence of Chief Judge

(5) Where the Chief Judge is absent from Ontario or is for any reason unable to act, all the powers and duties of the Chief Judge shall be exercised and performed by the Associate Chief Judge or, where both are absent or unable to act, by a judge designated by the Chief Judge. New.

Senior judges

64.-(1) The Lieutenant Governor in Council may designate a provincial judge to be a senior judge of the Provincial Court (Criminal Division), Provincial Court (Family Division), Provincial Court (Civil Division) or the Provincial Offences Court, for such area as is named in the designation. R.S.O.1980,c.398,s.11.

Duties

(2) A senior judge shall, subject to the authority of the chief judge, direct and supervise the sittings and the assignment of the judicial duties of the court in the area. New.

Election to revert to office of judge

65. A chief judge, associate chief judge or senior judge who has,

- (a) continued in the office for at least ten years; or
- (b) continued in office after attaining the age for retirement,

may elect by notice to the Attorney General to cease to perform the duties of that office and to assume the office of a provincial judge only. New.

Provincial Court (Criminal Division)

Provincial
Court
(Criminal
Division)

66.-(1) The provincial courts (criminal division) for the counties and districts are amalgamated and continued as a single court of record named the Provincial Court (Criminal Division).

Judge to
preside

(2) The Provincial Court (Criminal Division) shall be presided over by a provincial judge.
R.S.O.1980,c.398,s.14.

Exercise of
criminal
jurisdiction

67. A provincial judge shall exercise the powers and perform the duties vested in him or her as a magistrate, provincial magistrate or one or more justices of the peace under section 61 sitting in the Provincial Court (Criminal Division).
R.S.O.1980,c.398,s.15.

Sittings

68. The Provincial Court (Criminal Division) may sit at any place designated by the Chief Judge of the Provincial Court (Criminal Division).
R.S.O.1980,c.398,s.16.

Provincial Offences Court

Provincial
Offences Courts

69.-(1) The provincial offences courts for the counties and districts are amalgamated and continued as a single court of record named the Provincial Offences Court.

Judge or
justice of
the peace
to preside

(2) The Provincial Offences Court shall be presided over by a provincial judge or justice of the peace. R.S.O.1980,c.398,s.18(1).

Jurisdiction

70. The Provincial Offences Court shall perform any function assigned to it by or under the Provincial Offences Act or any other Act.

R.S.O.1980,
c.400

R.S.O.1980,c.398,s.18(2).

Sittings

71.-(1) The Provincial Offences Court may hold sittings at any place designated by the Chief Judge of the Provincial Offences Court.

Idem

(2) Where a proceeding in which the Provincial Offences Court has jurisdiction is conducted during the course of a sitting of the Provincial Court (Criminal Division) or Provincial Court (Family Division), the proceeding shall be deemed to be conducted in the Provincial Offences Court.

R.S.O.1980,c.398,s.19.

Contempt

72.-(1) Except as otherwise provided by statute, every person who commits contempt in the face of the Provincial Offences Court is on conviction liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

Statement
to offender

(2) Before proceedings are taken for contempt under subsection (1), the court shall inform the

offender of the conduct complained of and the nature of the contempt and inform him or her of the right to show cause why he or she should not be punished.

Show cause

(3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he or she should not be punished.

Adjournment
for adjudication

(4) Except where, in the opinion of the court, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the court shall adjourn the contempt proceeding to another day.

Adjudication
by judge

(5) Where a contempt proceeding is adjourned to another day under subsection (4), the contempt proceeding shall be heard and determined by the court presided over by a provincial judge.

Arrest for
immediate
adjudication

(6) Where the court proceeds to deal with a contempt immediately and without adjournment under subsection (4), the court may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination.

Barring agent
in contempt

(7) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in Ontario, the court may order that he or she be barred from acting as agent in the proceeding in addition to any other punishment to which he or she is liable.

Appeals

(8) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in proceedings commenced by certificate under Part I of the Provincial Offences Act.

R.S.O.1980,
c.400

Enforcement

(9) The Provincial Offences Act applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section. R.S.O.1980, c.398,s.20.

Penalty for
disturbance
outside
courtroom

73. Any person who knowingly disturbs or interferes with the proceedings of the Provincial Offences Court, without reasonable justification, while outside the courtroom is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both. R.S.O.1980, c.398,s.21.

Rules
Committee

74.-(1) There shall be a Rules Committee of the Provincial Offences Court composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members to preside over the Committee.

Quorum

(2) A majority of the members of the Rules Committee constitutes a quorum. New.

Rules

(3) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the Provincial Offences Court may make rules,

- (a) regulating any matters relating to the practice and procedure of the Provincial Offences Court;
- (b) prescribing forms respecting proceedings in the court;
- (c) regulating the duties of the clerks and employees of the court;
- (d) prescribing and regulating the procedures under any Act that confers jurisdiction on the Provincial Offences Court or a judge or justice of the peace sitting therein;
- (e) prescribing any matter that is referred to in an Act as provided for by the rules of the Provincial Offences Court. R.S.O.1980,c.398,s.22.

Provincial Court (Family Division)

Provincial
Court (Family
Division)

75.-(1) The provincial courts (family division) for the counties and districts are amalgamated and continued as a single court of record named the Provincial Court (Family Division).

Judge to
preside

(2) The Provincial Court (Family Division) shall be presided over by a provincial judge.

R.S.O.1980,c.398,s.23(1).

Jurisdiction

76. The Provincial Court (Family Division),

- (a) has jurisdiction to deal with juvenile delinquents;
- (b) has jurisdiction to try any minor charged with an offence against the laws of Ontario; and
- (c) shall perform any function assigned to it by or under the Family Law Reform Act, the Children's Law Reform Act, the Child Welfare Act, or any other Act. R.S.O.1980,c.398,s.23(2).

R.S.O.1980,
cc.152,68,66

Sittings

77. The Provincial Court (Family Division) may sit at any place designated by the Chief Judge of the Provincial Court (Family Division). R.S.O. 1980,c.398,s.25.

Rules
Committee

78.-(1) The rules committee of the provincial courts (family division) is continued as the Rules Committee of the Provincial Court (Family Division) and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members to preside over the committee.

Quorum

(2) A majority of the members of the Rules Committee constitutes a quorum.

Rules

(3) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the Provincial Court (Family Division) may make rules in relation to the practice and procedure of the court and may make rules for the court, even though they alter or conform to the substantive law, in relation to,

- (a) conduct of proceedings in the court;
- (b) joinder of claims and parties and representation of parties;
- (c) commencement of proceedings and service of process in or outside Ontario;
- (d) discovery and other forms of disclosure before hearing, including the scope thereof and the use of such discovery and disclosure in a proceeding;

- (e) examination of witnesses in or out of court;
- (f) duties of clerks and other officers;
- (g) costs of proceedings;
- (h) enforcement of orders and process;
- (i) payment into and out of court;
- (j) any matter that is referred to in an Act as provided for by rules of court,

and, where an Act contains provisions in respect of practice and procedure, the Rules Committee of the Provincial Court (Family Division) may make rules supplementing those provisions. R.S.O.1980,c.398, s.32.

Provincial Court (Civil Division)

Provincial Court
(Civil Division)

79.-(1) The small claims courts and the Provincial Court (Civil Division) are amalgamated and continued as a single court of record named the Provincial Court (Civil Division) and may also be known as the Small Claims Court.

Judges to
preside

(2) The Provincial Court (Civil Division) shall be presided over by,

- (a) a provincial judge; or
- (b) a judge of the District Court.

Deputy judges

(3) A judge of the District Court or the Chief Judge of the Provincial Court (Civil Division) may, with the approval of the Attorney General, appoint a barrister and solicitor to act as a deputy judge

of the Provincial Court (Civil Division), and the person so appointed may preside over the court in actions for not more than \$1,000. R.S.O.1980, c.476,ss.3,6,14,15.

Jurisdiction

80.-(1) The Provincial Court (Civil Division),

- (a) has jurisdiction in any action for the payment of money where the amount claimed does not exceed \$1,000 exclusive of interest and costs;
- (b) has jurisdiction in any action for the recovery of possession of personal property where the value of the property does not exceed \$1,000; and
- (c) shall perform any function assigned to it by or under any statute. R.S.O.1980, c.476,s.55.

Idem

(2) In the Judicial District of York and in such other areas as are designated under clause 86(b), the maximum claim or value of \$1,000 set out in subsection (1) shall be \$3,000 in each instance and not as set out therein. R.S.O.1980,c.397,s.6(1).

Summary hearings

(3) The Provincial Court (Civil Division) shall hear and determine in a summary way all questions of law and fact. R.S.O.1980,c.476,s.57.

Representation

81. A party may be represented in a proceeding in the Provincial Court (Civil Division) by counsel or an agent but the court may exclude from a hearing anyone, other than a barrister and solicitor qualified to practise in Ontario, appearing as an agent on behalf of a party if it

finds that such person is not competent properly to represent the party or does not understand and comply at the hearing with the duties and responsibilities of an advocate. R.S.O.1980,c.476, s.100.

Evidence

82.-(1) Subject to subsections (2) and (3), the Provincial Court (Civil Division) may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in any other court,

(a) any oral testimony; and

(b) any document or other thing, relevant to the subject matter of the proceeding and may act on such evidence, but the court may exclude anything unduly repetitious.

Idem

(2) Nothing is admissible in evidence at a hearing,

(a) that would be inadmissible by reason of any privilege under the law of evidence; or

(b) that is inadmissible by any statute.

Conflicts

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceedings.

Copies

(4) Where the presiding judge is satisfied as to its authenticity, a copy of a document or any other thing may be admitted as evidence at a hearing.
R.S.O.1980,c.476.s.98.

Instalment orders

83. The Provincial Court (Civil Division) may order the times and the proportions in which money payable under an order of the court shall be paid. R.S.O.1980,c.476,s.102(1).

Appeals

84. An appeal lies to the Divisional Court from a final order of the Provincial Court (Civil Division),

- (a) for the payment of money in excess of \$500, including interest but excluding costs; or
- (b) for the recovery of possession of personal property exceeding \$500 in value. R.S.O.1980,c.476.s.108.

Transfer from Supreme or District Court

85. Where, in an action in the Supreme Court or the District Court,

- (a) the only claim is for the payment of money or the return of personal property;
- (b) the claim is within the jurisdiction of the Provincial Court (Civil Division); and
- (c) no evidence has been heard in the action,

the action may, with the consent of the parties, be transferred to the Provincial Court (Civil Division) in the manner prescribed by the rules of the Provincial Court (Civil Division) and shall be titled and continued as if it had been commenced in that court. R.S.O.1980,c.397,s.7(2); 1982,c.58, s.5(2).

Regulations

86. The Lieutenant Governor in Council may make regulations,

- (a) prescribing territorial divisions for the Provincial Court (Civil Division) and the place within each division where the court office shall be located;
- (b) designating areas in which the maximum claim or value of \$1,000 set out in subsection 80(1) shall be \$3,000 in each instance and not as set out therein. R.S.O.1980,c.397,s.9; 1982,c.58, s.6(1)(b).

Rules
Committee

87.-(1) There shall be a Rules Committee of the Provincial Court (Civil Division) composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members to preside over the committee.

Quorum

(2) A majority of the members of the Rules Committee constitutes a quorum.

Rules

(3) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the Provincial Court (Civil Division) may make rules in relation to the practice and procedure of the court and may make rules for the court, even though they alter or conform to the substantive law, in relation to,

- (a) conduct of proceedings in the court;
- (b) joinder of claims and parties, settlement of claims by or against persons under disability, whether or not a proceeding has been commenced in

respect of the claim and representation of parties;

- (c) commencement of proceedings and service of process in or outside Ontario;
- (d) disposition of proceedings without a hearing and the effect thereof;
- (e) pleadings;
- (f) discovery and other forms of disclosure before hearing, including the scope thereof and the use of such discovery and disclosure in a proceeding;
- (g) examination of witnesses in or out of court;
- (h) duties of clerks and other officers;
- (i) motions;
- (j) preservation of rights of parties pending the outcome of litigation, including sale, recovery of possession or preservation of property;
- (k) preparation for trial and offers to settle and their legal consequences;
- (l) the mode and conduct of trials;
- (m) costs of proceedings;
- (n) enforcement of orders and process;
- (o) payment into and out of court;
- (p) any matter that is referred to in an Act as prescribed by rules of the Provincial Court (Civil Division),

and, where an Act contains provisions in respect of practice and procedure, the Rules Committee of the Provincial Court (Civil Division) may make rules supplementing those provisions. New.

Clerks and Officers

Clerks

88.-(1) There shall be such clerks for the Provincial Court (Criminal Division) and the Provincial Court (Family Division) as are considered necessary, appointed under the Public Service Act.

R.S.O.1980,
c.418

Idem

(2) Each clerk of the Provincial Court (Criminal Division) is a clerk of the Provincial Offences Court. R.S.O.1980,c.398,s.33.

Clerk and
bailiff of
Provincial
Court
(Civil
Division)

(3) There shall be a clerk and one or more bailiffs for each division of the Provincial Court (Civil Division) who shall be appointed by the Lieutenant Governor in Council.

Referee

(4) The Lieutenant Governor in Council may appoint a referee for a division of the Provincial Court (Civil Division), on the recommendation of a judge of the District Court or the Chief Judge of the Provincial Court (Civil Division). R.S.O.1980, c.476.s.20; 1983,c.22,s.1.

Powers of
probation
officers

89. Every probation officer appointed for the Provincial Court (Family Division) has, while acting in the discharge of his or her duties, all the powers of a police constable. R.S.O.1980, c.398,s.31.

Regulations

Regulations

90. The Lieutenant Governor in Council may make regulations,

- (a) specifying the returns to be made by provincial courts;
- (b) fixing the remuneration of provincial judges;
- (c) providing for the benefits to which provincial judges are entitled, including,
 - (i) leave of absence and vacations,
 - (ii) sick leave credits and payments in respect of such credits,
 - (iii) pension benefits for provincial judges and their surviving spouses and children,

and for the transfer or other disposition of benefits in respect thereof to which persons appointed as provincial judges under this Part were entitled under the Public Service Act or the Public Service Superannuation Act at the time of their appointment under this Part;

- (d) providing for the appointment and employment of court reporters and fixing their fees, expenses and other forms of remuneration;
- (e) prescribing the duties of the clerks and employees of provincial courts or of any class of such employees;
- (f) providing for the retention of fees by clerks, bailiffs and referees of the Provincial Court (Civil Division) who are not civil servants under the Public Service Act and designating areas where clerks, bailiffs and referees of the Provincial Court (Civil Division) may be appointed to a position as a civil servant under that Act,

- (g) providing for a system of statistical records relating to provincial courts. R.S.O.1980,c.398,s.34.

Ontario
Provincial
Courts
Committee

91.-(1) There shall be a committee to be known as the Ontario Provincial Courts Committee, composed of three members, of whom,

- (a) one shall be appointed jointly by the Provincial Judges Association (Criminal Division), the Ontario Family Court Judges Association and the Provincial Court Judges Association of Ontario (Civil Division);
- (b) one shall be appointed by the Lieutenant Governor in Council; and
- (c) one, to be the chairman, shall be appointed jointly by the bodies referred to in clauses (a) and (b).

Functions

(2) The function of the Ontario Provincial Courts Committee is to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remuneration, allowances and benefits of provincial judges, including the matters referred to in clauses 90(b) and (c).

Tabling of
recommendations

(3) Recommendations of the Committee under subsection (2) shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next ensuing session. New.

PART V

RULES OF CIVIL PROCEDURE

Rules
Committee

92.-(1) The Rules Committee continued under the Judicature Act, being chapter 223 of the Revised Statutes of Ontario, 1980, is continued as the Rules Committee of the Supreme and District Courts and shall be composed of,

- (a) the Chief Justice of Ontario, the Chief Justice of the High Court, the Associate Chief Justice of Ontario and the Associate Chief Justice of the High Court;
- (b) two judges of the Court of Appeal, who shall be appointed by the Chief Justice of Ontario;
- (c) four judges of the High Court, who shall be appointed by the Chief Justice of the High Court;
- (d) the Chief Judge and Associate Chief Judge of the District Court;
- (e) four judges of the District Court, who shall be appointed by the Chief Judge of the District Court;
- (f) the Attorney General or such law officer of the Crown as the Attorney General may from time to time appoint;
- (g) the Senior Master;
- (h) the Registrar of the Supreme Court;
- (i) a sheriff or a local registrar of the Supreme or District Court, who shall be appointed by the Attorney General;
- (j) five barristers or solicitors, who shall be appointed by the Benchers of The Law Society of Upper Canada in convocation; and

- (k) five other barristers and solicitors, who shall be appointed by the Chief Justice of Ontario.

Idem (2) The Chief Justice of Ontario shall preside over the Rules Committee but, where the Chief Justice of Ontario is absent or so requests, the Chief Justice of the High Court shall preside.

Idem (3) The Chief Justice of Ontario and the Chief Justice of the High Court may jointly appoint either the Associate Chief Justice of Ontario or the Associate Chief Justice of the High Court to preside over the Rules Committee at such times as are set out in the appointment.

Tenure of office (4) Each of the members of the Rules Committee appointed under clause (1)(b), (c), (e), (i), (j) or (k) shall hold office for a period of three years and is eligible for reappointment.

Vacancies (5) Where a vacancy occurs among the members appointed under clause (1)(b), (c), (e), (i), (j) or (k), a new member similarly qualified may be appointed for the remainder of the unexpired term. R.S.O.1980,c.223,s.116(1-6).

Quorum (6) A majority of the members of the Rules Committee constitutes a quorum. R.S.O.1980,c.223, s.116(7).

Rules of Civil Procedure 93. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the

Supreme and District Courts may make rules for the Supreme Court and the District Court in relation to the practice and procedure of the courts and may make rules for such courts, even though they alter or conform to the substantive law, in relation to,

- (a) conduct of proceedings in the courts;
- (b) joinder of claims and parties, settlement of claims by or against persons under disability, whether or not a proceeding has been commenced in respect of the claim, the binding effect of orders and representation of parties;
- (c) commencement of proceedings, representation of parties by solicitors and service of process in or outside Ontario;
- (d) disposition of proceedings without a hearing and the effect thereof;
- (e) pleadings;
- (f) discovery and other forms of disclosure before hearing, including the scope thereof and the use of such discovery and disclosure in a proceeding;
- (g) examination of witnesses in or out of court;
- (h) jurisdiction of local judges, including the conferral on local judges of any jurisdiction of the Supreme Court or a judge thereof, including jurisdiction under a statute, but not including the trial of actions;
- (i) jurisdiction of masters, including the conferral on masters of any jurisdiction of the Supreme Court, including jurisdiction under a statute, but not including the trial of actions or jurisdiction conferred by a statute on a judge;
- (j) jurisdiction and duties of officers and hours of business for court offices;

- (k) motions and applications, including the hearing of motions in the absence of the public and prohibiting a party from making motions without leave;
- (l) preservation of rights of parties pending the outcome of litigation, including sale, recovery of possession or preservation of property;
- (m) interpleader;
- (n) preparation for trial and offers to settle and their legal consequences;
- (o) the mode and conduct of trials, including use of reports of experts appointed by the court;
- (p) the discount rate to be used in determining the amount of an award in respect of future pecuniary damages;
- (q) references of proceedings or issues in a proceeding and the powers of a person conducting a reference;
- (r) costs of proceedings, including security for costs;
- (s) enforcement of orders and process or obligations under the rules;
- (t) the time for and procedure on appeals and stays pending appeal;
- (u) payment into and out of court;
- (v) any matter that is referred to in an Act as provided for by rules of court,

and, where an Act contains provisions in respect of practice and procedure, the Rules Committee of the Supreme and District Courts may make rules supplementing those provisions. R.S.O.1980,c.223, s.116(10,11).

PART VI

JUDGES, OFFICERS AND STAFF

Oath of
office

94. Every judge or officer of a court of record in Ontario shall, before entering on the duties of office, take and sign the following oath or affirmation in either the English or French language:

I solemnly swear (affirm) that I will faithfully, and to the best of my skill and knowledge, execute the duties of
So help me God (delete this line in an affirmation). R.S.O.1980,c.223,s.84(1).

Persona
designata
abolished

95. Where an adjudicative function is given by statute to a judge or officer of a court of record in Ontario, the jurisdiction shall be deemed to be given to the court. New.

Liability
of judges

96. Every judge of a court of record in Ontario and every master of the Supreme Court has the same immunity from liability as a judge of the Supreme Court. New.

Compensation
of judges for
statutory duties

97. Every judge of the Supreme Court and of the District Court shall be paid out of the Consolidated Revenue Fund the annual sum of \$3,000, payable quarterly, as compensation for the services the judge is called on to render by any Act of the Legislature in addition to his or her ordinary duties. R.S.O.1980,c.149,s.2.

Extra-judicial
services

98.-(1) A judge of the Supreme Court or the District Court may act as a conciliator, arbitrator or referee or on a commission of inquiry under an Act of the Legislature or under an agreement made under any such Act.

Remuneration

(2) A judge acting under subsection (1) shall not receive any remuneration but shall be reimbursed for reasonable travelling and other expenses incurred while so acting. R.S.O.1980, c.149,s.3.

Inspector of
Legal Offices

99.-(1) The Lieutenant Governor in Council may appoint an Inspector of Legal Offices.

Inspection

(2) The Inspector may inspect all court offices and such other offices connected with the administration of justice as the Attorney General designates. R.S.O.1980,c.223,s.107(1).

Inquiries by
Inspector

(3) The Inspector may inquire into the administration of any office that he or she is entitled to inspect and may require any person, other than a judge or master, to give evidence on oath or affirmation, and for that purpose the Inspector has the same power to summon witnesses and compel the production of documents as the Supreme Court. R.S.O.1980,c.223,s.108(2).

Destruction
of documents

(4) Documents and other material that are no longer required in a court office shall be disposed

of in accordance with the directions of the
Inspector, subject to the approval of,

- (a) in the Supreme Court, the Chief Justice of Ontario;
- (b) in the District Court, the Unified Family Court and the surrogate courts, the Chief Judge of the District Court;
- (c) in the Provincial Court (Criminal Division) and the Provincial Offences Court, the Chief Judge of the Provincial Court (Criminal Division);
- (d) in the Provincial Court (Family Division), the Chief Judge of the Provincial Court (Family Division);
- (e) in the Provincial Court (Civil Division), in the counties and districts where a judge of the District Court presides, the Chief Judge of the District Court and in other counties and districts the Chief Judge of the Provincial Court (Civil Division).
R.S.O.1980,c.223,s.108(4).

Official
Guardian

100.-(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint an Official Guardian. New.

Qualifications

(2) No person shall be appointed Official Guardian unless he or she has been a member of the bar of one of the provinces of Canada for at least ten years.

Duties

(3) The Official Guardian shall be the litigation guardian of minors and other persons in accordance with an Act, the Rules of Civil Procedure or an order of the Supreme Court.

Costs

(4) The same costs as are payable to litigation guardians are payable to the Official Guardian and costs recovered by the Official Guardian shall be paid into the Consolidated Revenue Fund. R.S.O. 1980,c.223,s.109(1-3).

Security for costs

(5) The Official Guardian shall not be required to give security for costs in any proceeding. R.S.O.1980,c.223,s.109(15).

Mortgages held by Accountant

(6) Where a person for whom the Official Guardian has acted is interested in a mortgage held by the Accountant, the Official Guardian shall take reasonable care to ensure that,

- (a) money payable on the mortgage is promptly paid;
- (b) the mortgaged property is kept properly insured; and
- (c) taxes on the mortgaged property are promptly paid.

Payment into court

(7) Money received by the Official Guardian on behalf of a person for whom he or she acts shall, unless the court orders otherwise, be paid into court to the credit of the person entitled.

Assessment of costs

(8) Where the amount payable into court under subsection (7) is to be ascertained by the deduction of unassessed costs from a fund, the Official Guardian may require the costs to be assessed forthwith. New.

Audit

(9) The Provincial Auditor shall examine and

report on the accounts and financial transactions of the Official Guardian. R.S.O.1980,c.223, s.109(12).

Assessment
officers

101.-(1) The Registrar of the Supreme Court of Ontario, each master, local registrar and deputy local registrar of the Supreme Court, local registrar and deputy local registrar of the District Court and the clerk of the Unified Family Court is an assessment officer.

Idem

(2) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such additional assessment officers as are considered necessary.

Jurisdiction

(3) Every assessment officer has the jurisdiction conferred by the Rules of Civil Procedure. New.

Official
examiners

102.-(1) Every local registrar and deputy local registrar of the Supreme Court and local registrar and deputy local registrar of the District Court is an official examiner for the county or district for which he or she is appointed.

Additional
official
examiners

(2) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint additional official examiners. R.S.O.1980,c.223, s.104(1,2).

Deputy
official
examiners

(3) With the approval of the Attorney General, every official examiner may appoint a deputy official examiner who may exercise and perform all the powers and duties of the official examiner. R.S.O.1980,c.223,s.104(7).

Officers
of court

(4) Every official examiner and deputy official examiner is an officer of every court in Ontario.
New.

Court staff

R.S.O.1980,
c.418

103. Court reporters, translators, interpreters and such other employees as are considered necessary for the administration of the courts in Ontario may be appointed under the Public Service Act. R.S.O.1980,c.100,s.4(1); R.S.O.1980,c.398,s.33(3); R.S.O.1980,c.515,s.17.

Administration
of oaths

104. Every officer of a court has, for the purposes of any matter before him or her, power to administer oaths and affirmations and to examine parties and witnesses. R.S.O.1980,c.223,s.124.

Money held
by officer
of court

105. Money or property vested in or held by an officer of a court shall be deemed to be vested in the officer in trust for Her Majesty, subject to being disposed of in accordance with any statute, rule of court or order. R.S.O.1980,c.223,s.112.

Disposition of
court fees

106. All fees payable to a judge or salaried officer of a court in respect of a proceeding in

the court shall be paid into the Consolidated Revenue Fund. R.S.O.1980,c.101,s.10;R.S.O.1980,c.223,s.87.

PART VII

COURT PROCEEDINGS

Application
of Part

107.-(1) This Part applies to civil proceedings in courts of Ontario.

Application
to criminal
proceedings

(2) Sections 121 (constitutional questions) and 131 (rendering decisions), section 133 and subsection 134(7) (language of proceedings) and sections 140 (judge sitting on appeal) and 144 (prohibition against photography at court hearing) also apply to proceedings under the Criminal Code (Canada), except in so far as they are inconsistent with that Act.

R.S.C.1970,
c.C-34

Application
to provincial
offences

(3) Sections 121 (constitutional questions), 133, 134 (language of proceedings), 140 (judge sitting on appeal) and 144 (prohibition against photography at court hearings) also apply to proceedings under the Provincial Offences Act and, for the purpose, a reference therein to a judge includes a justice of the peace presiding in the Provincial Offences Court. New.

R.S.O.1980,
c.400

Common Law and Equity

Rules of law
and equity

108.-(1) Courts shall administer concurrently all rules of equity and the common law.

R.S.O.1980,c.223,s.18.

Rules of equity
to prevail

(2) Where a rule of equity conflicts with a rule of the common law, the rule of equity prevails.

Jurisdiction
for equitable
relief

(3) Unless otherwise provided, only the Supreme Court, the District Court and the Unified Family Court may grant equitable relief. R.S.O.1980, c.223,ss.25,26.

Declaratory
orders

109. The Supreme Court, the District Court and the Unified Family Court may make binding declarations of right whether or not any consequential relief is or could be claimed. R.S.O.1980,c.223,s.18,par.2.

Relief against
penalties

110. A court may grant relief against penalties and forfeitures, on such terms as to compensation or otherwise as are considered just. R.S.O.1980, c.228,s.22.

Damages in lieu
of injunction
or specific
performance

111. A court that has jurisdiction to grant an injunction or order specific performance may award damages in addition to, or in substitution for, the injunction or specific performance. R.S.O.1980, c.223,s.21.

Vesting
orders

112. A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed. R.S.O.1980,c.223,s.79.

Interlocutory Orders

Injunctions and receivers	<p>113.-(1) In the Supreme Court, the District Court or the Unified Family Court, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.</p>
Terms	<p>(2) An order under subsection (1) may include such terms as are considered just. R.S.O.1980, c.223,s.19(1).</p>
"labour dispute" defined	<p>114.-(1) In this section, "labour dispute" means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.</p>
Notice	<p>(2) Subject to subsection (8), no injunction to restrain a person from an act in connection with a labour dispute shall be granted without notice.</p>
Steps before injunction proceeding	<p>(3) In a motion or proceeding for an injunction to restrain a person from an act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance,</p>

protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry or exit from the premises in question or breach of the peace have been unsuccessful.

Evidence

(4) Subject to subsection (8), affidavit evidence in support of a motion for an injunction to restrain a person from an act in connection with a labour dispute shall be confined to statements of facts within the knowledge of the deponent, but any party may by notice to the party filing such affidavit, and payment of the proper attendance money, require the attendance of the deponent to be cross-examined at the hearing.

Interim injunction

(5) An interim injunction to restrain a person from an act in connection with a labour dispute may be granted for a period of not longer than four days.

Notice

(6) Subject to subsection (8), at least two days notice of a motion for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the responding party and to any other person affected thereby but not named in the notice of motion.

Idem

(7) Notice required by subsection (6) to persons other than the responding party may be given,

- (a) where such persons are members of a labour organization, by personal service on an officer or agent of the labour organization; and
- (b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected,

and service and posting under this subsection shall be deemed to be sufficient notice to all such persons.

Interim
injunction
without notice

(8) Where notice as required by subsection (6) is not given, the court may grant an interim injunction where,

- (a) the case is otherwise a proper one for the granting of an interim injunction;
- (b) notice as required by subsection (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service;
- (c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under section 87 of the Labour Relations Act to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and
- (d) proof of all material facts for the purpose of clauses (a), (b) and (c) is established by oral evidence.

R.S.O.1980,
c.228

Misrepresenta-
tion as contempt
of court

(9) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly, in a proceeding for an injunction under this section, constitutes a contempt of court.

Appeal

(10) An appeal from an order under this section lies to the Court of Appeal without leave.

R.S.O.1980,c.223,s.20.

Certificate
of pending
litigation

115.-(1) The commencement of a proceeding in which an interest in land is in question is not notice of the proceeding to a person who is not a party until a certificate of pending litigation is issued by the court and the certificate is registered in the proper land registry office under subsection (2).

Registration

(2) Where a certificate of pending litigation is issued under subsection (1) it may be registered whether the land is registered under the Land Titles Act or the Registry Act. R.S.O.1980,c.223, s.38(1).

R.S.O.1980,
cc.230,445

Exception

(3) Subsections (1) and (2) do not apply to a proceeding for foreclosure or sale on a registered mortgage or to enforce a lien under the Construction Lien Act, 1983.

1983,c.6

Liability
where no
reasonable
claim

(4) A party who registers a certificate under subsection (2) without a reasonable claim to an interest in the land is liable for any damages sustained by any person as a result of its registration.

Recovery
of damages

(5) The liability for damages under subsection (4) and the amount thereof may be determined in the proceeding in respect of which the certificate was registered or in a separate proceeding.

R.S.O.1980,c.223,s.38(3-5).

Order vacating
certificate

(6) The court may make an order discharging a certificate,

- (a) where the party at whose instance it was issued,
 - (i) claims a sum of money in place of or as an alternative to the interest in the land claimed,
 - (ii) does not have a reasonable claim to the interest in the land claimed, or
 - (iii) does not prosecute the proceeding with reasonable diligence;
- (b) where the interests of the party at whose instance it was issued can be adequately protected by another form of security; or
- (c) on any other ground that is considered just,

and the court may, in making the order, impose such terms as to the giving of security or otherwise as the court considers just. R.S.O.1980,c.223,s.39 (1-3).

Effect

(7) Where a certificate is discharged, any person may deal with the land as fully as if the certificate had not been registered. R.S.O.1980, c.223,s.39(6).

Application
of section

(8) Subsections (1) to (7) apply with necessary modifications to a certificate or caution under section 38 of the Judicature Act, being chapter 223 of the Revised Statutes of Ontario, 1980, registered after the 24th day of November, 1977 and before this Act comes into force.

Idem

R.S.O.1980,
c.223,s.38(6)

(9) Subsections (1), (2), (3), (6) and (7) apply with necessary modifications to a certificate or caution under section 38 of the Judicature Act registered before the 25th day of November, 1977. R.S.O.1980,c.223,s.38(6).

Interim order
for recovery
of personal
property

116.-(1) In an action in which the recovery of possession of personal property is claimed and it is alleged that the property,

(a) was unlawfully taken from the possession of the plaintiff; or

(b) is unlawfully detained by the defendant, the court, on motion, may make an interim order for recovery of possession of the property.

Damages

(2) A person who obtains possession of personal property by obtaining or setting aside an interim order under subsection (1) is liable for any loss suffered by the person ultimately found to be

entitled to possession of the property. R.S.O.
1980,c.449,s.2.

"medical
practitioner"
defined

117.-(1) In this section, "medical
practitioner" means a person licensed to practise
medicine or dentistry in Ontario or any other
jurisdiction.

Order for
physical or
mental
examination

(2) Where the physical or mental condition of a
party to a proceeding is in question, the court, on
motion, may order the party to submit to one or
more physical or mental examinations by one or more
medical practitioners.

Idem

(3) Where the question of a party's physical or
mental condition is first raised by another party,
an order under subsection (2) shall not be made
unless the allegation is relevant to a material
issue in the proceeding and there is good reason to
believe that there is substance to the allegation.

Examiner may
ask questions

(4) Where an order is made under subsection (2),
the party examined shall answer the questions of
the examining medical practitioner relevant to the
examination and the answers given are admissible in
evidence. R.S.O.1980,c.223,s.77.

Stay of
proceedings

118. A court, on its own initiative or on
motion by any person, whether or not a party, may
stay any proceeding in the court on such terms as
are considered just. R.S.O.1980,c.223,s.18,par.6.

Consolidation,
etc., of
proceedings

119.-(1) Where two or more proceedings are pending in two or more different courts, and the proceedings,

- (a) have a question of law or fact in common;
- (b) claim relief arising out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason ought to be the subject of an order under this section,

an order may, on motion, be made,

- (d) transferring any of the proceedings to another court and requiring the proceedings to be consolidated, or to be heard at the same time, or one immediately after the other; or
- (e) requiring any of them to be stayed until after the determination of any other of them, on such terms as are considered just.

Transfer from
Provincial Court
(Civil Division)

(2) A proceeding shall not be transferred under clause (1)(d) from the Provincial Court (Civil Division) to the District Court or the Supreme Court without the consent of the parties to the proceeding.

Motions

(3) The motion shall be made,

- (a) where one or more of the proceedings are in the Supreme Court, to a judge of the Supreme Court;
- (b) where none of the proceedings are in the Supreme Court, to a judge of the District Court.

Directions

(4) An order under clause (1)(d) may give such directions as are considered just to avoid

- (d) dissolution of a partnership or taking of partnership or other accounts;
- (e) foreclosure or redemption of a mortgage;
- (f) sale and distribution of the proceeds of property subject to any lien or charge;
- (g) execution of a trust;
- (h) rectification, setting aside or cancellation of a deed or other written instrument;
- (i) specific performance of a contract;
- (j) declaratory relief;
- (k) any other equitable relief;
- (l) any relief against a municipality.
R.S.O.1980.c.223,ss.58,60(4).

Idem (3) On motion, the court may order that issues of fact be tried or damages assessed without a jury. R.S.O.1980.c.223,s.59(2).

Composition of jury

R.S.O.1980,
c.226

Verdicts or questions

(4) Where a proceeding is tried with a jury, the jury shall be composed of six persons selected in accordance with the Juries Act. New.

(5) Where a proceeding is tried with a jury,

(a) the judge may, except in actions of libel, require the jury to give a general verdict or to answer specific questions; and

(b) judgment may be entered in accordance with the verdict or the answers to the questions. R.S.O.1980,c.223,ss.64,65 (1,3).

Idem (6) It is sufficient if five of the jurors agree on the verdict or the answer to a question, and where more than one question is submitted, it is

not necessary that the same five jurors agree to every answer. R.S.O.1980,c.223,s.62.

Discharge of
juror at trial

(7) The judge presiding at a trial may discharge a juror on the ground of illness, hardship, partiality or other sufficient cause.

Continuation
with five
jurors

(8) Where a juror dies or is discharged, the judge may direct that the trial proceed with five jurors, in which case the verdict or answers to questions must be unanimous. R.S.O.1980,c.223,s.63.

Specifying
negligent
acts under
R.S.O.1980,
c.198,s.167(1)

(9) Where a proceeding to which subsection 167(1) of the Highway Traffic Act applies is tried with a jury, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the proceeding is brought. R.S.O.1980,c.223,s.65(2).

Malicious
prosecution

(10) In an action for malicious prosecution, the trier of fact shall determine whether or not there was reasonable and probable cause for instituting the prosecution. R.S.O.1980,c.223,s.66.

Constitutional
questions

121.-(1) Where the constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature or of a regulation or by-law made thereunder is in question, the Act, regulation or by-law shall not be adjudged to be invalid or inapplicable unless

notice has been served on the Attorney General of Canada and the Attorney General of Ontario in accordance with subsection (2).

Form and
time of
notice

(2) The notice shall be in the form provided for by the Rules of Civil Procedure and, unless the court orders otherwise, shall be served at least ten days before the day on which the question is to be argued.

Notice of
appeal

(3) Where the Attorney General of Canada and the Attorney General of Ontario are entitled to notice under subsection (1), they are entitled to notice of any appeal in respect of the constitutional question.

Right of
Attorneys
General to
be heard

(4) Where the Attorney General of Canada or the Attorney General of Ontario is entitled to notice under this section, he or she is entitled to adduce evidence and make submissions to the court in respect of the constitutional question.

Right of
Attorneys
General to
appeal

(5) Where the Attorney General of Canada or the Attorney General of Ontario makes submissions under subsection (4), he or she shall be deemed to be a party to the proceedings for the purpose of any appeal in respect of the constitutional question.
R.S.O.1980,c.223,s.35.

Proceeding
in wrong forum

122.-(1) Where a proceeding or a step in a proceeding is brought or taken before the wrong

court, judge or officer, it may be transferred or adjourned to the proper court, judge or officer.

Continuation
of proceeding

(2) A proceeding that is transferred to another court under subsection (1) shall be titled in the court to which it is transferred and shall be continued as if it had been commenced in that court. New.

Set off

123.-(1) In an action for payment of a debt, the defendant may, by way of defence, claim the right to set against the plaintiff's claim a debt owed by the plaintiff to the defendant. R.S.O.1980,c.223, s.134.

Idem

(2) Mutual debts may be set against each other, notwithstanding that they are of a different nature or that one debt is owed to or by a person in a personal capacity and the other debt is owed by or to the person in a capacity other than personal. R.S.O.1980,c.223,s.135(1).

Judgment for
defendant

(3) Where, on a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance. R.S.O.1980, c.223,s.136.

Report of
Official
Guardian in
divorce action

R.S.C.1970,
c.D-8

Agents

Report
admissible
in evidence

Attendance
on report

Payment
of fees

124.-(1) Where a petition or counterpetition for divorce contains particulars of a child under the age of eighteen years who is a child of the marriage within the meaning of section 2 of the Divorce Act (Canada), the Official Guardian shall cause an investigation to be made and shall report to the court on all matters relating to the custody, maintenance and education of the child.

(2) The Official Guardian may engage another person to make the investigation.

(3) An affidavit of the person making the investigation, verifying the report as to facts that are within the person's knowledge and setting out the source of the person's information and belief as to other facts, with the report attached as an exhibit thereto, shall form part of the evidence at the hearing of the divorce proceeding.

(4) Where a party to the proceeding disputes the facts set out in the report, the Official Guardian shall if directed by the court, and may when not so directed, attend the hearing on behalf of the child and cause the person who made the investigation to attend as a witness.

(5) The petitioner shall pay such fees for and disbursements arising from an investigation in respect of the petition as are prescribed under the

R.S.O.1980,
c.6

Administration of Justice Act.

Idem

(6) The Official Guardian shall not serve or file the report of the investigation until the fees and disbursements have been paid, unless the court orders otherwise. R.S.O.1980,c.258,s.1(2-7).

Costs of
Official
Guardian

(7) The fees and disbursements of the Official Guardian payable under subsection (5) shall be deemed to be costs incurred in the proceeding for the purposes of any order for costs. R.S.O.1980, c.258,s.1(9).

Agreement
preventing
third party
claim

125. Rules of court permitting a defendant to make a third party claim apply notwithstanding any agreement that provides that no action may be brought until after judgment against the defendant.
New.

Agreement as
to place of
hearing

126. Where a party moves to change the place of hearing in a proceeding, an agreement as to the place of hearing is not binding, but may be taken into account. R.S.O.1980,c.223,s.61.

Security

127. Where a person is required to give security in respect of any proceeding in a court, a bond of a guarantee company to which the Guarantee Companies Securities Act applies is sufficient, unless the court orders otherwise. R.S.O.1980, c.223,s.76.

R.S.O.1980,
c.192

Periodic payment
and review of
damages

R.S.O.1980,
c.152

128. In a proceeding where damages are claimed,

(a) for personal injuries; or

(b) under Part V of the Family Law Reform Act, for loss resulting from the injury to or death of a person,

the court may, with the consent of all affected parties,

(c) order the defendant to pay all or part of the award for damages periodically on such terms as the court considers just;

(d) order that the award for damages be subject to future review and revision in such circumstances and on such terms as the court considers just. New.

Assessment
of damages

129. Where damages are to be assessed in respect of,

(a) a continuing cause of action;

(b) repeated breaches of a recurring obligation; or

(c) intermittent breaches of a continuing obligation,

the damages, including damages for breaches occurring after the commencement of the proceeding, shall be assessed down to the time of the assessment. New.

Actions for
accounting

130.-(1) Where an action for an accounting could have been brought against a person, the action may be brought against his or her personal representative.

Idem (2) An action for an accounting may be brought by a joint tenant or tenant in common, or his or her personal representative, against a co-tenant for receiving more than the co-tenant's just share. R.S.O.1980,c.223,s.139.

Interpretation 131.--(1) In this section,

- (a) "chief judge" means the person having authority to assign duties to the judge;
- (b) "judge" includes a local judge or master.

Inability to render decision (2) A judge may, within ninety days of,

- (a) reaching retirement age;
- (b) resigning; or
- (c) being appointed to another court,

give a decision or participate in the giving of a decision in any matter previously tried or heard before the judge.

Decision of remaining judges (3) Where a judge has commenced a hearing together with other judges and,

- (a) dies before the decision is given;
- (b) is for any reason unable to participate in the giving of the decision; or
- (c) does not participate in the giving of the decision under subsection (2),

the remaining judges may complete the hearing and give the decision of the court but, if the remaining judges are equally divided, a party may make a motion to the chief judge for an order that the matter be reheard. R.S.O.1980,c.223,s.11(1-3).

Motion for
rehearing

(4) Where a judge has commenced hearing a matter sitting alone and,

- (a) dies without giving a decision;
- (b) is for any reason unable to make a decision; or
- (c) does not give a decision under subsection (2),

a party may make a motion to the chief judge for an order that the matter be reheard. R.S.O.1980, c.100,s.30(1).

Extension
of time

(5) Where a judge has heard a matter and fails to give a decision,

- (a) in the case of judgment, within six months; or
- (b) in any other case, within three months,

the chief judge may extend the time in which the decision may be given and, if necessary, relieve the judge of his or her other duties until the decision is given.

Continued
failure

(6) Where time has been extended under subsection (5) but the judge fails to give the decision within that time, unless the chief judge grants a further extension,

- (a) the chief judge shall report the failure and the surrounding circumstances to the appropriate judicial council; and
- (b) a party may make a motion to the chief judge for an order that the matter be reheard. New.

Rehearing

(7) Where an order is made under subsection (3),

(4) or (6) for the rehearing of a matter, the chief judge may,

- (a) dispose of the costs of the original hearing or refer the question of those costs to the judge or judges presiding at the rehearing;
- (b) direct that the rehearing be conducted on the transcript of evidence taken at the original hearing, subject to the discretion of the court at the rehearing to recall a witness or require further evidence; and
- (c) give such other directions as are considered just. R.S.O.1980,c.100, s.30(2-6).

Service on
Sunday

132. Except in cases of urgency, no document shall be served and no order shall be executed on Sunday. R.S.O.1980,c.223,s.132.

Language

Official
languages of
the courts

133.-(1) The official languages of the courts of Ontario are English and French. New.

Proceedings
in English
unless otherwise
provided

(2) Except as otherwise provided with respect to the use of the French language,

- (a) hearings in courts shall be conducted in the English language and evidence adduced in a language other than English shall be interpreted into the English language; and
- (b) documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by affidavit of the translator. R.S.O.1980,c.223,s.130(1).

"designated
court" defined

134.-(1) In this section, "designated court"
means,

- (a) a court sitting in,
 - (i) the county of Essex or Renfrew,
 - (ii) the judicial district of Niagara South, Ottawa-Carleton or York,
 - (iii) the territorial district of Algoma, Cochrane, Nipissing, Sudbury or Timiskaming,
 - (iv) the united counties of Prescott and Russell or the united counties of Stormont, Dundas and Glengarry;
- (b) a court designated by order of the Lieutenant Governor in Council, sitting in a place that is not in a county or district mentioned in clause (a) and is designated in the order. R.S.O.1980, c.223,s.130(2,3); 1983,c.3,s.1(1).

Trial before
bilingual
judge

(2) In a proceeding in a designated court, a party who speaks the French language has the right to require that the hearing be conducted before a judge who speaks both the English and French languages.

Jury trial
before
bilingual jury

(3) In a proceeding in a designated court under clause (1)(a) that is to be heard by a jury, a party who speaks the French language has, with the consent of all parties, the right to require that the hearing be conducted before jurors who speak both the English and French languages.

Proceedings
in English
and French

(4) Where a right under subsection (2) or (3) is exercised,

- (a) all evidence adduced and submissions made at the hearing in the proceeding in the English or French language shall be received, recorded and transcribed in the language in which it is given;
- (b) any other part of the hearing may be conducted in the French language if, in the opinion of the presiding judge, the hearing can be so conducted;
- (c) any oral evidence adduced at an examination before or after the hearing in a proceeding in the English or French language shall be received, recorded and transcribed in the language in which it is given;
- (d) the court may order that clauses (a) and (b) apply to any other step in the proceeding;
- (e) with the consent of all the parties, pleadings and other documents filed in the proceeding may be in the French language only;
- (f) the reasons for the decision in the proceeding may be in either the English or French language; and
- (g) on the request of a party or counsel who speaks the English or French language, but not both, the court shall provide,
 - (i) interpretation of anything given orally in the other language under clause (a), (b), (c) or (d), or
 - (ii) translation of documents in the other language submitted under clause (a), (d) or (f), unless the court orders otherwise,

into the language spoken by the party or counsel. R.S.O.1980,c.223,s.130(6,7).

Appeals

(5) Where an appeal is taken in a proceeding to which subsection (4) applies,

- (a) a party who speaks the French language has the right to require the hearing of

the appeal to be conducted before a judge or judges who speak both the English and French languages, in which case subsection (4) applies, with necessary modifications, to the hearing of the appeal; and

- (b) the court whose decision is appealed shall provide a translation into the English or French language, at the request of a party or counsel who speaks only one of these languages, of any part of the transcript of the hearing that is in the other language.

Court documents (6) A document filed by a party before the hearing in a proceeding in the Provincial Court (Family Division) or the Provincial Court (Civil Division) where the court is a designated court may be in the French language only. R.S.O.1980,c.223, s.130(8);1983,c.3,s.1(2).

Process (7) A process issued in or giving rise to a criminal proceeding or a proceeding in the Provincial Offences Court where it is a designated court may be filed in the court in the French language only.

Translation (8) A document or process referred to in subsection (6) or (7) that is filed in the English or French language only shall be translated by the court into the other language on the request of a party.

Interpretation
in undesignated
courts (9) Where, at a hearing in a court that is not a designated court or at a hearing in a designated court to which subsection (4) does not apply, a

party acting in person makes submissions to the court in the French language or a witness gives oral evidence in the French language, the court shall provide an interpreter to translate the submissions or evidence into the English language.

Corporations,
etc.

(10) A corporation, partnership or sole proprietorship may claim the rights under this section in the same manner as a person who speaks either the English or French language, unless the court orders otherwise.

Regulations

(11) The Lieutenant Governor in Council may make regulations prescribing procedures for the purpose of this section. New.

Interest and costs

Interpretation

135.-(1) In this section and in sections 136 and 137,

- (a) "bank rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short-term advances to the chartered banks;
- (b) "date of the order" means the date the order is made, notwithstanding that the order is not entered or enforceable on that date, or that the order is varied on appeal, and in the case of an order directing a reference, the date the report on the reference is confirmed;
- (c) "postjudgment interest rate" means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the date of the order falls, rounded to the next higher

whole number where the bank rate includes a fraction, plus 1 per cent;

- (d) "prejudgment interest rate" means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced, rounded to the next higher whole number where the bank rate includes a fraction, plus 1 per cent;
- (e) "quarter" means the three-month period ending with the 31st day of March, 30th day of June, 30th day of September or 31st day of December. R.S.O.1960, c.223,s.36(1)(2).

Calculation
and publication
of interest

(2) After the first day of the last month of each quarter, the Registrar of the Supreme Court shall forthwith,

- (a) determine the prejudgment and postjudgment interest rate for the next quarter; and
- (b) publish in The Ontario Gazette a table showing the rate determined under clause (a) for the next quarter and for all the previous quarters during the preceding ten years. New.

Prejudgment
interest

136.-(1) A person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest thereon at the prejudgment interest rate, calculated,

- (a) where the order is made on a liquidated claim, from the date the cause of action arose to the date of the order; or
- (b) where the order is made on an unliquidated claim, from the date the person entitled gave notice in writing of his claim to the person liable therefor to the date of the order.

Special
damages

(2) Where the order includes an amount for special damages, the interest calculated under subsection (1) shall be calculated on the balance of special damages incurred as totalled at the end of each six-month period following the notice in writing referred to in clause (1)(b) and at the date of the order.

Exclusion

(3) Interest shall not be awarded under subsection (1),

- (a) on exemplary or punitive damages;
 - (b) on interest accruing under this section;
 - (c) on an award of costs in the proceeding;
 - (d) on that part of the order that represents pecuniary loss arising after the date of the order and that is identified by a finding of the court;
 - (e) where the order is made on consent, except by consent of the debtor; or
 - (f) where interest is payable by a right other than under this section.
- R.S.O.1980,c.223,s.36(3-6).

Application

(4) Where a proceeding is commenced before this section comes into force, this section does not apply and section 36 of the Judicature Act, being chapter 223 of the Revised Statutes of Ontario, 1980, continues to apply, notwithstanding section 186.

Postjudgment
interest

137.-(1) Money owing under an order, including costs fixed by the court, bears interest at the

postjudgment interest rate, calculated from the date of the order.

Interest on
periodic
payments

(2) Where an order provides for periodic payments, each payment in default shall bear interest only from the date of default.

Interest
on orders
originating
outside Ontario

(3) Where an order is based on an order given outside Ontario or an order of a court outside Ontario is filed with a court in Ontario for the purpose of enforcement, money owing under the order bears interest at the rate, if any, applicable to the order given outside Ontario by the law of the place where it was given.

Assessed
costs without
order

(4) Where costs are assessed under an order or without an order, the costs bear interest at the postjudgment interest rate in the same manner as if the issuance of the certificate of assessment were the making of an order. R.S.O.1980,c.223,s.37(1).

Other provision
for interest

(5) Interest shall not be awarded under this section where interest is payable by a right other than under this section. New.

Application

(6) Where an order for the payment of money is made before this section comes into force, this section does not apply and section 37 of the Judicature Act, being chapter 223 of the Revised Statutes of Ontario, 1980, continues to apply, notwithstanding section 186.

Discretion
of court to
disallow

138. The court may, where it considers it just to do so,

- (a) disallow interest under section 136 or 137;
- (b) allow interest at a rate higher or lower than that provided in section 136 or 137;
- (c) allow interest for a period other than that provided in section 136 or 137,

in respect of the whole or any part of the amount on which interest is payable under sections 136 and 137. R.S.O.1980,c.223,ss.36(6),37(2).

Costs

139.-(1) Subject to the provisions of an Act or rules of court, the costs of a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid. R.S.O.1980,c.223, s.80(1).

Crown costs

(2) In a proceeding to which Her Majesty is a party, costs awarded to Her Majesty shall not be disallowed or reduced on assessment merely because they relate to a barrister or solicitor who is a salaried officer of the Crown, and costs recovered on behalf of Her Majesty shall be paid into the Consolidated Revenue Fund. R.S.O.1980,c.223, s.80(5).

Appeals

Judge not to
hear appeal from
own decision

140. A judge shall not sit as a member of a court hearing an appeal from his or her own decision. R.S.O.1980,c.223,ss.42(6),46(5).

Leave to appeal
required

141. No appeal lies without leave of a judge of the court to which the appeal is to be taken,

- (a) from an order made with the consent of the parties; or
- (b) where the appeal is only as to costs that are in the discretion of the court that made the order for costs on the ground that the discretion was wrongly exercised. R.S.O.1980,c.223, ss.27,80(4).

Powers on
appeal

142.-(1) Unless otherwise provided, a court to which an appeal is taken may,

- (a) make any order or decision that ought to or could have been made by the court or tribunal appealed from;
- (b) order a new trial; and
- (c) make any other order or decision that is considered just. R.S.O.1980,c.223, s.29(1).

Interim
orders

(2) On motion, a court to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal.

Interlocutory
orders

(3) The powers of a court to which an appeal is taken are not restricted by an interlocutory order that has not been appealed. New.

Determination
of fact

(4) Unless otherwise provided, a court to which an appeal is taken may, in a proper case,

- (a) draw inferences of fact from the evidence, except that no inference shall be drawn that is inconsistent with a finding that has not been set aside;
- (b) receive further evidence by affidavit, transcript of oral examination, oral examination before the court or in such other manner as the court directs; and
- (c) direct a reference or the trial of an issue,

to enable the court to determine the appeal.

Scope of
decisions

(5) The powers conferred by this section may be exercised notwithstanding that the appeal is as to part only of an order or decision, and may be exercised in favour of a party even though he or she did not appeal. R.S.O.1980,c.223,s.29(2,3).

New trial

(6) A court to which an appeal is taken shall not direct a new trial unless some substantial wrong or miscarriage of justice has occurred.

Idem

(7) Where some substantial wrong or miscarriage of justice has occurred but it affects only part of an order or decision or some of the parties, a new trial may be ordered in respect of only that part or those parties. R.S.O.1980,c.223,ss.30,31.

Public Access

Public
hearings

143.-(1) Subject to subsection (2) and the rules of court, all court hearings shall be open to the public. R.S.O.1980,c.223,s.117.

Exception

(2) The court may order the public to be excluded from a hearing where,

- (a) there is reason to believe that the hearing would disclose matters harmful to public security; or
- (b) the possibility of serious harm or injustice to any person justifies a departure from the general principle that court hearings should be open to the public.

Disclosure of information

(3) Where a proceeding is heard in the absence of the public, disclosure of information relating to the proceeding is not contempt of court unless the court expressly prohibited the disclosure of the information. New.

Prohibition against photography, etc., at court hearing

144.-(1) Subject to subsections (2) and (3), no person shall,

- (a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,
 - (i) at a court hearing,
 - (ii) of any person entering or leaving the room in which a court hearing is to be or has been convened, or
 - (iii) of any person in the building in which a court hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing; or
- (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a).

Sketches

(2) Nothing in subsection (1) prohibits a person from unobtrusively making notes or sketches at a court hearing.

Exceptions

(3) Subsection (1) does not apply to a photograph, motion picture, audio recording or record made with authorization of the judge,

- (a) where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;
- (b) in connection with any investitive, naturalization, ceremonial or other similar proceeding; or
- (c) with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.

Offence

(4) Every person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both. R.S.O.1980,c.223,s.67.

Documents
public

145.-(1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless a statute or an order of the court provides otherwise. R.S.O.1980, c.223,s.129(4).

Sealing
documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record. New.

Court lists
public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document he or she is entitled to see. R.S.O.1980,c.223,s.129(1,3).

Miscellaneous

Multiplicity
of proceedings

146. As far as possible, multiplicity of legal proceedings shall be avoided. R.S.O.1980,c.223, s.18,par.8.

Joint liability
not affected by
judgment or
release

147.--(1) Where two or more persons are jointly liable in respect of the same cause of action, a judgment against or release of one of them does not preclude judgment against any other in the same or a separate proceeding.

Two proceedings
in respect of
same damage

(2) Where a person who has suffered damage brings two or more proceedings in respect of the damage, the person is not entitled to costs in any of the proceedings, except the first proceeding in which judgment is obtained, unless the court is of the opinion that there were reasonable grounds for bringing more than one proceeding. New.

Vexatious
proceedings

148.--(1) Where a judge of the Supreme Court is satisfied, on application, that a person has

habitually, persistently and without reasonable grounds,

- (a) instituted vexatious proceedings in any court; or
- (b) conducted a proceeding in any court in a vexatious manner,

the judge may order that,

- (c) no further proceeding be instituted by the person in any court; or
- (d) a proceeding previously instituted by the person in any court not be continued,

except by leave of a judge of the Supreme Court.

Attorney
General

(2) An application under subsection (1) shall be made only with the consent of the Attorney General, and the Attorney General is entitled to be heard on the application. R.S.O.1980,c.523,s.1(1,2).

Motion for
leave to
proceed

(3) Where a person against whom an order under subsection (1) has been made seeks leave to institute or continue a proceeding, he or she shall do so by way of an application in the Supreme Court.

Leave to
proceed

(4) Where an application for leave is made under subsection (3),

- (a) leave shall be granted only if the court is satisfied that the proceeding sought to be instituted or continued is not an abuse of process and that there are reasonable grounds for the proceeding;
- (b) the person making the application for leave may seek the rescission of the order made under subsection (1) but may not seek any other relief on the application;

- (c) the court may rescind the order made under subsection (1);
- (d) the Attorney General is entitled to be heard on the application; and
- (e) no appeal lies from a refusal to grant relief to the applicant.

Abuse of
process

(5) Nothing in this section limits the authority of a court to stay or dismiss a proceeding as an abuse of process or on any other ground. New.

Enforcement
of orders and
process

149. The orders and process of a court in Ontario are enforceable throughout Ontario. New.

Protection for
acting under
court order

150. A person is not liable for any act done in good faith in accordance with an order or process of a court in Ontario. R.S.O.1980,c.223,s.142.

Enforcement of
bonds and
recognizances

151.-(1) A bond or recognizance arising out of a civil proceeding may be enforced in the same manner as an order for the payment of money by leave of a judge on motion by the Attorney General or any other person entitled to enforcement.

Enforcement
of fines for
contempt

(2) A fine for contempt of court may be enforced by the Attorney General in the same manner as an order for the payment of money or in any other manner permitted by law.

Levy

(3) The sheriff to whom a writ obtained under subsection (1) or (2) is directed shall proceed immediately to carry out the writ without a direction to levy. R.S.O.1980,c.144,s.

Payment to
foreign payee

152. Money that has been paid into court or that is in the hands of an executor or administrator, and that is payable to a person who is a subject of a foreign country that has a consul in Canada who is authorized to act as the person's official representative, may be paid to the consul. R.S.O.1980,c.223,s.113.

Seal of
court

153.-(1) The courts shall have such seals as are approved by the Attorney General.

Idem

(2) Every document issued out of a court in a civil proceeding shall bear the seal of the court. R.S.O.1980,c.223,ss.12,94.

Jurisdiction of
Federal Court

154. The Federal Court of Canada has jurisdiction,

- (a) in controversies between Canada and Ontario;
- (b) in controversies between Ontario and any other province in which an enactment similar to this section is in force,

R.S.C.1970
(2nd Supp.),
c.10

in accordance with section 19 of the Federal Court Act (Canada). R.S.O.1980,c.125,s.1.

PART VIII

TRANSITIONAL PROVISIONS

Application to
all proceedings

155.-(1) This Act applies to all proceedings, whether commenced before or after this Act comes into force, subject to subsection (2) and except as otherwise provided.

Exceptions

(2) Where a proceeding is commenced before this Act comes into force, on motion, the court in which the proceeding was commenced may order, subject to such terms as are considered just and subject to variation by further order, that the proceeding be continued under the Acts and rules of court that governed the matter immediately before this Act comes into force or may make any other order that is considered just.

Continuation of county court proceedings

156.-(1) A proceeding commenced in a county or district court, a county or district court judge's criminal court or a court of general sessions of the peace and pending when Part II comes into force is continued in the District Court.

References of county and district courts

(2) A reference in an Act or regulation to a county or district court or to a judge or the Chief Judge or Associate Chief Judge thereof shall be deemed to be a reference to the District Court or a judge, the Chief Judge or Associate Chief Judge thereof, respectively.

Continuation of proceedings in provincial courts

157.-(1) A proceeding commenced in a provincial court (criminal division), a provincial court (family division), a provincial offences court or a small claims court and pending when Part IV comes into force is continued in the Provincial Court (Criminal Division), the Provincial Court (Family

Division), the Provincial Offences Court or the Provincial Court (Civil Division), respectively.

References to
provincial
courts

(2) A reference in an Act or regulation to a provincial court (criminal division), a provincial court (family division), a provincial offences court or a small claims court shall be deemed to be a reference to the Provincial Court (Criminal Division), the Provincial Court (Family Division), the Provincial Offences Court or the Provincial Court (Civil Division), respectively.

Reference to
territorial
jurisdiction

158. Where by an Act or regulation, jurisdiction is conferred on a particular county or district court, provincial court or provincial offences court, the jurisdiction shall be deemed to be conferred on the District Court, Provincial Court or Provincial Offences Court sitting in the county or district of the court named.

PART IX

COMPLEMENTARY AMENDMENTS TO STATUTE LAW

Changes in
terminology

159. A reference in any Act, rule or regulation, or order or other court process to a term set out in column 1 of the Table, or any form thereof, shall be deemed to refer to the corresponding term set out opposite thereto in column 2.

TABLE

<u>Column 1</u>	<u>Column 2</u>
1. administrator <u>ad litem</u>	1. litigation administrator
2. certificate of <u>lis pendens</u>	2. certificate of pending litigation
3. conduct money	3. attendance money
4. guardian <u>ad litem</u>	4. litigation guardian
5. next friend	5. litigation guardian
6. originating motion	6. application
7. origination notice	7. notice of application
8. Rules of Practice and Procedure of the Supreme Court of Ontario made by the Rules Committee	8. Rules of Civil Procedure
9. taxation of costs	9. assessment of costs
10. taxing officer	10. assessment officer
11. writ of <u>fieri facias</u>	11. writ of seizure and sale
12. writ of summons	12. statement of claim or notice of action

R.S.O.1980,
c.25,s.31(1),
repealed

160. Subsection 31(1) of the Arbitrations Act, being chapter 25 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.37,ss.6,7,12,
amended

161. The Bailiffs Act, being chapter 37 of the Revised Statutes of Ontario, 1980, is amended by striking out "clerk of the peace" where it occurs in sections 6, 7 and 12 and inserting in lieu thereof in each instance "sheriff".

R.S.O.1980,
c.68,s.68,
repealed

162. Section 68 of the Children's Law Reform Act, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed.

R.S.O.1980,
c.86,
repealed

163. The Constitutional Questions Act, being chapter 86 of the Revised Statutes of Ontario, 1980, is repealed.

1983,c.6,
s.51(2)(a),
amended

164.-(1) Clause 51(2)(a) of the Construction Lien Act, 1983, being chapter 6, is amended by striking out "having jurisdiction" in the first line and inserting in lieu thereof "sitting".

Idem
s.51(2)(b,c),
re-enacted

(2) Clauses 51(2)(b) and (c) of the said Act are repealed and the following substituted therefor:

- (b) on consent of the persons to whom a notice of trial must be given and on the order of a local judge sitting in the county or district referred to in clause (a), by a local judge sitting in another county or district, but not in the Judicial District of York; or
- (c) where upon motion a local judge sitting in the county or district referred to in clause (a) so orders, by a judge of the court at the regular sittings of the court for the trial of actions in that county or district.

Idem
s.52(1)(b),
re-enacted

(3) Clause 52(1)(b) of the said Act is repealed and the following substituted therefore:

1983,c. ...

- (b) a master assigned to the county or district in which the premises or part thereof are situate or a commissioner appointed under section 23 of the Courts of Justice Act, 1983, where the premises are situate outside the Judicial District of York.

Idem
s.52(1)(c),
amended

(4) Clause 52(1)(c) of the said Act is amended by striking out "the" in the second line and inserting in lieu thereof "a".

Idem
s.52(2),
amended

(5) Subsection 52(2) of the said Act is amended by striking out "appointed local master" in the first line and inserting in lieu thereof "commissioner".

Idem
s.52(2)(b),
amended

(6) Clause 52(2)(b) of the said Act is amended by striking out "appointed local master" in the second line and inserting in lieu thereof "commissioner".

Idem
s.52(2)(c),
amended

(7) Clause 52(2)(c) of the said Act is amended by striking out "originating".

Idem
s.52(3),
amended

(8) Subsection 52(3) of the said Act is amended by striking out "appointed local master" in the second line and inserting in lieu thereof "commissioner".

Idem
s.53,
amended

(9) Section 53 of the said Act is amended by striking out "an appointed local master" in the second line and inserting in lieu thereof "commissioner".

Idem
s.54,
amended

(10) Section 54 of the said Act is amended by striking out "an appointed local master" in the first and second lines and inserting in lieu thereof "commissioner".

Idem
s.55(1),
amended

(11) Subsection 55(1) of the said Act is amended by striking out "filing" in the first line and inserting in lieu thereof "issuing" and by striking out "registrar or" in the second line.

Idem (12) Subsection 55(2) of the said Act is amended
s.55(2),
amended by striking out "filed" in the second line and
inserting in lieu thereof "issued".

Idem (13) Subsection 56(2) of the said Act is
s.56(2),
re-enacted repealed and the following substituted therefor:

Noting in (2) Where a person against whom a claim is made
default in a statement of claim, counterclaim, crossclaim
or third party claim defaults in the delivery of a
defence to that claim, the person against whom the
claim is made may be noted in default.

Idem (14) Subsection 56(3) of the said Act is amended
s.56(3),
amended by striking out "pleadings have been noted closed
against a defendant or third party" in the first
and second lines and inserting in lieu thereof "a
defendant or third party has been noted in
default".

Idem (15) Subsection 56(4) of the said Act is amended
s.56(4),
amended by striking out "against whom pleadings have been
noted closed" in the second and third lines and
inserting in lieu thereof "who has been noted in
default" and by striking out "proceeding in respect
of" in the seventh line and inserting in lieu
thereof "step in".

Idem (16) Subsection 56(5) of the said Act is
s.56(5),
repealed repealed.

Idem (17) Section 58 of the said Act is amended by
s.58,
amended striking out "proceedings" where it occurs in the
first line and in the third line of paragraph 3 and

inserting in lieu thereof "claims" in each instance.

Idem
s.60(1)(b),
re-enacted

(18) Clause 60(1)(b) of the said Act is repealed and the following substituted therefor:

1983,c. ...

(b) a local judge may refer to a master assigned to the county or district in which the trial is to take place or a commissioner appointed under section 23 of the Courts of Justice Act, 1983.

Idem
s.60(1),
amended

(19) Subsection 60(1) of the said Act is amended by striking out "under section 71 of the Judicature Act" in the ninth line.

Idem
s.60(2)(b),
re-enacted

(20) Clause 60(2)(b) of the said Act is repealed and the following substituted therefor:

(b) a local judge may direct a reference to a master assigned to the county or district in which the trial is to take place or to a commissioner.

Idem
s.60(2),
amended

(21) Subsection 60(2) of the said Act is amended by striking out "under section 70 or 71 of the Judicature Act" in the sixth line.

Idem
s.60(3),
amended

(22) Subsection 60(3) of the said Act is amended by striking out "local master" in the second line and inserting in lieu thereof "commissioner".

Idem
s.63(6),
re-enacted

(23) Subsection 63(6) of the said Act is repealed and the following substituted therefor:

Non-application
of Rule 50

(6) Rule 50 of the Rules of Civil Procedure does not apply to an action under this Act.

Idem
s.64(1)(b),
amended

(24) Clause 64(1)(b) of the said Act is amended by striking out "an appointed local master of the court" in the second and third lines and inserting in lieu thereof "commissioner".

Idem
s.64(2),
amended

(25) Subsection 64(2) of the said Act is amended by striking out "proceedings" in the third line and inserting in lieu thereof "action".

Idem
s.64(3),
amended

(26) Subsection 64(3) of the said Act is amended by striking out "an appointed local master" in the first line and inserting in lieu thereof "commissioner" and by striking out "appeal" in the fourth line and inserting in lieu thereof "a motion to oppose confirmation of the report".

Idem
s.69(2),
amended

(27) Subsection 69(2) of the said Act is amended by striking out "proceedings" where it occurs in the first line and in the third line and inserting in lieu thereof "steps" in each instance.

Idem
s.69(6),
amended

(28) Subsection 69(6) of the said Act is amended by striking out "interlocutory" in the fourth line.

Idem
s.73(1,2),
re-enacted

(29) Subsections 73(1) and (2) of the said Act are repealed and the following substituted therefor:

Appeal to
Divisional
Court

(1) Subject to subsection (3), an appeal lies to the Divisional Court from a judgment or an order on a motion to oppose confirmation of a report under this Act.

Notice of
appeal

(2) A party wishing to appeal shall file and serve his notice of appeal within fifteen days of the date of the judgment or order, but the time for filing or serving the notice of appeal may be extended by the written consent of all parties, or by a single judge of the Divisional Court where an appropriate case is made out for doing so.

Idem
s.73(3)(a),
amended

(30) Clause 73(3)(a) of the said Act is amended by inserting after "or" in the first line "an order on a motion to oppose confirmation of".

Idem
s.88(1),
amended

(31) Subsection 88(1) of the said Act is amended by striking out "an appointed local master" in the eighteenth and nineteenth lines and inserting in lieu thereof "commissioner".

Idem
s.88(3),
repealed

(32) Subsection 88(3) of the said Act is repealed.

Idem
s.89(3),
repealed

(33) Subsection 89(3) of the said Act is repealed.

R.S.O.1980,
c.93,s.3(6),
re-enacted

165. Subsection 3(6) of the Coroners Act, being chapter 93 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Crown attorney
notified of
appointment

(6) A copy of the order appointing a coroner shall be sent by the Minister to the Crown attorney of any county or district in which the coroner will ordinarily act.

R.S.O.1980,
c.99,
repealed

166. The County Court Judges' Criminal Courts Act, being chapter 99 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.100;
1981,c.24,
repealed

167. The County Courts Act, being chapter 100 of the Revised Statutes of Ontario, 1980 and the County Courts Amendment Act, 1981, being chapter 24, are repealed.

R.S.O.1980,
c.101,
repealed

168. The County Judges Act, being chapter 101 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.107,s.6,
repealed

169.-(1) Section 6 of the Crown Attorneys Act, being chapter 107 of the Revised Statutes of Ontario, 1980, is repealed.

Idem
s.12(b)(ii),
re-enacted;
s.12(b)(iii),
repealed

(2) Subclauses 12(b)(ii) and (iii) of the said Act are repealed and the following substituted therefor:

(ii) at sittings of the District Court,
and

.

Idem
s.12(i),
repealed

(3) Clause 12(i) of the said Act is repealed.

Idem
s.14,
amended

(4) Section 14 of the said Act is amended by striking out "and clerk of the peace" in the second and third lines.

Idem
s.15,
amended

(5) Section 15 of the said Act is amended by striking out "and clerk of the peace" in the first line.

R.S.O.1980,
c.118,s.19,
repealed

170. Section 19 of the Developmental Services Act, being chapter 118 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.120,s.2(3),
amended

171. Subsection 2(3) of the Disorderly Houses Act, being chapter 120 of the Revised Statutes of Ontario, 1980, is amended by striking out "clerk of the peace" in the second line and inserting in lieu thereof "local registrar of the District Court".

R.S.O.1980,
c.125,
repealed

172. The Dominion Courts Act, being chapter 125 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.143,s.26,
repealed

173. Section 26 of the Estates Administration Act, being chapter 143 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.144,
repealed

174. The Estreats Act, being chapter 144 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.145,s.48,
amended

175.-(1) Section 48 of the Evidence Act, being chapter 145 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Presumption

(2) An examination or deposition received or read in evidence under subsection (1) shall be presumed to represent accurately the evidence of the party or witness, unless the contrary is shown.

Idem
s.60(1),
amended

(2) Subsection 60(1) of the said Act is amended by inserting after "process" in the fifth line "for a purpose for which a letter of request could be issued under the Rules of Civil Procedure".

R.S.O.1980,
c.146,s.19a,
enacted

176.--(1) The Execution Act, being chapter 146 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

Powers of
entry

19a.--(1) A sheriff acting under a writ of seizure and sale, a writ of delivery or a writ of sequestration may use reasonable force to enter premises other than a dwelling where he believes, on reasonable and probable grounds, that there is property liable to be taken in execution under the writ and may use reasonable force to execute the writ.

Idem
dwelling

(2) A sheriff acting under a writ of seizure and sale, a writ of delivery or a writ of sequestration in respect of property on premises that is used as a dwelling shall not use force to enter the dwelling or execute the writ except under the authority of an order of the court by which the writ was issued, and the court may make the order where in the opinion of the court there is reasonable and probable grounds to believe that there is property on the premises that is liable to be taken in execution under the writ.

Idem
s.25,
repealed

(2) Section 25 of the said Act is repealed.

Idem
s.29a,
enacted

(3) The said Act is further amended by adding thereto the following section:

Execution
against partner

29a. Under an execution against a partner in his personal capacity, partnership assets shall not be taken in execution, but an order may be made

appointing a receiver of the partner's share of profits whether already declared or accruing and of any other money that may be coming to him in respect of the partnership.

R.S.O.1980,
c.149,
repealed

177. The Extra-Judicial Services Act, being chapter 149 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.152,s.2(6),
repealed

178.--(1) Subsection 2(6) of the Family Law Reform Act, being chapter 152 of the Revised Statutes of Ontario, 1980, is repealed.

Idem
s.30,
repealed

(2) Section 30 of the said Act is repealed.

R.S.O.1980,
c.162,s.3,
amended

179. Section 3 of the Fines and Forfeitures Act, being chapter 162 of the Revised Statutes of Ontario, 1980, is amended by striking out "court of general sessions of the peace" in the fifth and sixth lines and inserting in lieu thereof "District Court".

R.S.O.1980,
c.187,
repealed

180. The General Sessions Act, being chapter 187 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.193,s.1(1),
amended

181. Subsection 1(1) of the Habeas Corpus Act, being chapter 193 of the Revised Statutes of Ontario, 1980, is amended by striking out "court of general sessions of the peace" in the third and

fourth lines and inserting in lieu thereof
"District Court".

R.S.O.1980,
c.198,s.180(3),
re-enacted

182. Subsection 180(3) of the Highway Traffic Act, being chapter 198 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Action for
damages

(3) Notwithstanding subsections (1) and (2), when an action is within the time limited by this Act for the recovery of damages occasioned by a motor vehicle and a counterclaim, crossclaim or third party claim is commenced by a defendant in respect of damages occasioned in the same accident, the lapse of time herein limited is not a bar to the counterclaim, crossclaim or third party claim.

R.S.O.1980,
c.219,s.19a,
enacted

183.-(1) The Interpretation Act, being chapter 219 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

Death of Sovereign

Death of
Sovereign

19a. Where a reigning Sovereign dies, no rule or construction of law shall be applied so as to prevent the continuation of any matter under the successor to the Crown as if the death had not occurred.

Idem
ss.28,29,
repealed

(2) Sections 28 and 29 of the said Act are repealed.

Idem
s.30,par.31,
amended

(3) Paragraph 31 of section 30 of the said Act is amended by striking out "Judicature Act" in the second line and inserting in lieu thereof "Courts of Justice Act, 1983".

Idem
s.31,
amended

(4) Section 31 of the said Act is amended by striking out "Judicature Act" in the first line and inserting in lieu thereof "Courts of Justice Act, 1983".

R.S.O.1980,
c.220,
s.1(c),
amended

184. Clause 1(c) of the Interprovincial Subpoenas Act, being chapter 220 of the Revised Statutes of Ontario, 1980, is amended by striking out "or hearing" in the fourth line and inserting in lieu thereof "hearing or examination".

R.S.O.1980,
c.222,
repealed

185. The Judges' Orders Enforcement Act, being chapter 222 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.223;
1981,c.23;
1983.c.3,
repealed

186.-(1) The Judicature Act, being chapter 223 of the Revised Statutes of Ontario, 1980, the Judicature Amendment Act, 1981, being chapter 23, and the Judicature Amendment Act, 1983, being chapter 3, are repealed.

Suitors Fee
Fund Account
abolished

(2) The Suitors Fee Fund Account is abolished and all money in the account shall be paid into the Consolidated Revenue Fund.

R.S.O.1980,
c.224,s.11,
repealed

187. Section 11 of the Judicial Review Procedure Act, being chapter 224 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.226,
s.5(1)(a)(ii),
repealed,

188.-(1) Subclause 5(1)(a)(ii) of the Juries Act, being chapter 226 of the Revised Statutes of Ontario, 1980, is repealed.

Idem
s.8(2),
amended

(2) Subsection 8(2) of the said Act is amended by striking out "is designated in a county or district under section 130 of the Judicature Act" in the first and second lines and inserting in lieu thereof "is a designated court under clause 134(1)(a) of the Courts of Justice Act, 1983".

Idem
s.12(1),
amended

(3) Subsection 12(1) of the said Act is amended by striking out "or of the court of general sessions of the peace" in the fourth and fifth lines.

Idem
s.14(2),
amended

(4) Subsection 14(2) of the said Act is amended by striking out "or court of general sessions of the peace" in the third line.

Idem
ss.15,20,
repealed

(5) Sections 15 and 20 of the said Act are repealed.

Idem
s.21(1),
amended

(6) Subsection 21(1) of the said Act is amended by striking out "registered" in the second line and inserting in lieu thereof "ordinary".

Idem
s.23(4),
amended

(7) Subsection 23(4) of the said Act is amended by striking out "of the Supreme Court for the trial of criminal matters and proceedings, or in the case of a sittings of the court of general sessions of the peace" in the first, second and third lines and

inserting in lieu thereof "for the hearing of criminal proceedings".

Idem
s.24(2),
amended

(8) Subsection 24(2) of the said Act is amended by striking out "or the court of general sessions of the peace, or both" in the third and fourth lines.

Idem
s.26(1),
amended

(9) Subsection 26(1) of the said Act is amended by striking out "or court of general sessions of the peace" in the fourth and fifth lines.

Idem
s.28,
amended

(10) Section 28 of the said Act is amended by striking out "courts of general sessions of the peace and of" in the sixth line.

Idem
s.35,
amended

(11) Section 35 of the said Act is amended by striking out "court of general sessions of the peace, and of the" in the second line.

Idem
s.39(1)(a),
amended

(12) Clause 39(1)(a) of the said Act is amended by striking out "the court of general sessions of the peace or of" in the second line.

Idem
s.42(2),
amended

(13) Subsection 42(2) of the said Act is amended by striking out "or clerk of the peace" in the first line.

Idem
s.43(d),
amended

(14) Clause 43(d) of the said Act is amended by striking out "clerk of the peace" in the first line.

Idem
s.46,
amended

(15) Section 46 of the said Act is amended by striking out "and the court of general sessions of the peace" in the second and third lines.

R.S.O.1980,
c.230,s.135(1),
repealed

189. Subsection 135(1) of the Land Titles Act, being chapter 230 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.237,s.11,
repealed

190. Section 11 of the Libel and Slander Act, being chapter 237 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.255,s.1(a),
repealed

191. Clause 1(a) of the Marine Insurance Act, being chapter 255 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.258,
repealed

192. The Matrimonial Causes Act, being chapter 258 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.262,s.45,
repealed

193. Section 45 of the Mental Health Act, being chapter 262 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.264,s.6,
amended

194.-(1) Section 6 of the Mental Incompetency Act, being chapter 264 of the Revised Statutes of Ontario, 1980, is amended by striking out "the confirmation of" in the fourth and fifth lines and by striking out "confirmation" in the fifth and sixth lines and inserting in lieu thereof "propounding".

Idem
s.12(1),
amended

(2) Subsection 12(1) of the said Act is amended by striking out the words following clause (c) in the eleventh, twelfth, thirteenth and fourteenth lines.

Idem
s.12(2),
repealed

(3) Subsection 12(2) of the said Act is repealed.

Idem
s.12(3),
amended

(4) Subsection 12(3) of the said Act is amended by striking out "and any such appointment need not be confirmed" in the fourth line.

Idem
s.38,
repealed

(5) Section 38 of the said Act is repealed.

R.S.O.1980,
c.296,
s.41(2),
amended

195.-(1) Subsection 41(2) of the Mortgages Act, being chapter 296 of the Revised Statutes of Ontario, 1980, is amended by striking out "the clerk of the county or district court, or by the local master of" in the fifth and sixth lines and inserting in lieu thereof "an assessment officer in".

Idem
s.41(4),
amended

(2) Subsection 41(4) of the said Act is amended by striking out "one of the taxing officers of the Supreme Court at Toronto or by a local master having jurisdiction in the county or district in which the mortgaged property or any part of it is situate" in the third, fourth, fifth and sixth lines and inserting in lieu thereof "an assessment officer".

R.S.O.1980,
c.304,s.13,
repealed

196. Section 13 of the Municipal Arbitrations Act, being chapter 304 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.315, s.1,
repealed

197. Section 1 of the Negligence Act, being chapter 315 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.347,
s.95(1),
re-enacted;
s.95(2,3),
repealed

198. Subsections 95(1), (2) and (3) of the Ontario Municipal Board Act, being chapter 347 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

Appeal (1) Subject to the provisions of Part IV, an appeal lies from the Board to the Divisional Court, with leave of the Divisional Court, on a question of law.

R.S.O.1980,
c.369,s.3(1),
amended

199.-(1) Subsection 3(1) of the Partition Act, being chapter 369 of the Revised Statutes of Ontario, 1980, is amended by striking out "appointed by a surrogate court" in the second line and by striking out "take proceedings" in the third line and inserting in lieu thereof "bring an action or make an application".

Idem
s.4(1),
amended

(2) Subsection 4(1) of the said Act is amended by striking out "application" in the fourth line and inserting in lieu thereof "motion".

Idem
s.4(3),
amended

(3) Subsection 4(3) of the said Act is amended by striking out "application" in the third line and inserting in lieu thereof "motion".

Idem
s.5(1),
amended

(4) Subsection 5(1) of the said Act is amended by striking out "an action or proceeding" in the first line and in the second line and inserting in lieu thereof in each instance "a proceeding".

Idem
s.7(1),
amended

(5) Subsection 7(1) of the said Act is amended by striking out "proceedings under this Act are" in the first line and inserting in lieu thereof "an application under this Act is".

R.S.O.1980,
c.381,s.44,
repealed

200. Section 44 of the Police Act, being chapter 381 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.391,
ss.3(1,2,7),
6(1),7,12(2),
50,53,
amended

201. Subsections 3(1), (2) and (7), subsection 6(1), section 7, subsection 12(2) and sections 50 and 53 of the Private Sanitaria Act, being chapter 391 of the Revised Statutes of Ontario, 1980, are amended by striking out "clerk of the peace" in each instance where it occurs and inserting in lieu thereof "Crown attorney".

R.S.O.1980,
c.393,s.3,
amended

202.--(1) Section 3 of the Proceedings Against the Crown Act, being chapter 393 of the Revised Statutes of Ontario, 1980, is amended by striking out "Except as provided in section 29" in the first line.

Idem
s.14,
re-enacted

(2) Section 14 of the said Act is repealed and the following substituted therefor:

Service
on the Crown

14. In proceedings under this Act, a document to be served personally on the Crown shall be served by leaving a copy of the document with a solicitor in the Crown Law Office-Civil of the Ministry of the Attorney General.

Idem
s.26,
re-enacted

(3) Section 26 of the said Act is repealed and the following substituted therefor:

Payment
by Crown

26. The Treasurer of Ontario shall pay out of the Consolidated Revenue Fund the amount payable by the Crown under an order of a court that is final and not subject to appeal or under a settlement of a proceeding in a court.

R.S.O.1980,
c.398,
amended

203.--(1) The title to the Provincial Courts Act, being chapter 398 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

JUVENILE OBSERVATION AND DETENTION HOMES ACT

Idem
ss.1-26,31-33,
34(1)(a-f,l,m),
repealed

(2) Sections 1 to 26, sections 31 to 33 and clauses 34(1)(a), (b), (c), (d), (e), (f), (l) and (m) of the said Act are repealed.

R.S.O.1980,
c.397;
1982,c.58,
repealed

204. The Provincial Court (Civil Division) Act, being chapter 397 of the Revised Statutes of Ontario, 1980 and the Provincial Court (Civil Division) Project Amendment Act, 1982, being chapter 58, are repealed.

R.S.O.1980,
c.400,s.76(1),
amended

205.--(1) Subsection 76(1) of the Provincial Offences Act, being chapter 400 of the Revised Statutes of Ontario, 1980, is amended by inserting

after "prescribed" in the second line "by or under any Act".

Idem
s.114,
amended
Appeal as
to leave

(2) Section 114 of the said Act is amended by adding thereto the following subsection:

(3) No appeal or review lies from a decision on a motion for leave to appeal under subsection (1).

Idem
s.122,
amended
Appeal as
to leave

(3) Section 122 of the said Act is amended by adding thereto the following subsection:

(4) No appeal or review lies from a decision on a motion for leave to appeal under subsection (1).

R.S.O.1980,
c.416,
repealed

206. The Public Officers' Fees Act, being chapter 416 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.427,
repealed

207. The Quieting Titles Act, being chapter 427 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.432,s.7,
repealed

208. Section 7 of the Reciprocal Enforcement of Judgments Act, being chapter 432 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.449,
repealed

209. The Replevin Act, being chapter 449 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.462,
s.1(1)(a),
repealed

210. Clause 1(1)(a) of the Sale of Goods Act, being chapter 462 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,
c.470,s.2,
re-enacted

211.-(1) Section 2 of the Sheriffs Act, being chapter 470 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Enforcement
of court orders

2. Except where a statute provides otherwise, orders of a court enforceable in Ontario shall be directed to the sheriff for enforcement.

Idem
s.11(3),
repealed

(2) Subsection 11(3) of the said Act is repealed.

Idem
s.12,
re-enacted

(3) Section 12 of the said Act is repealed and the following substituted therefor:

Office
hours

12. Every sheriff's office shall be open for business on the days and during the hours that court offices are required to be open under the Rules of Civil Procedure.

Idem
s.17,
amended

(4) Section 17 of the said Act is amended by striking out "the court of general sessions of the peace" in the third line.

R.S.O.1980,
c.476;
1983,c.22,
repealed

212.-(1) The Small Claims Courts Act, being chapter 476 of the Revised Statutes of Ontario, 1980 and the Small Claims Courts Amendment Act, 1983, being chapter 22, are repealed.

R.S.O.1980,
c.478,s.6,
amended

213.-(1) Section 6 of the Solicitors Act, being chapter 478 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Appeal

(10) An appeal lies to the High Court from a certificate of assessment of costs issued under this section, where the appeal is on an issue in respect of which an objection was served in accordance with the Rules of Civil Procedure respecting party and party costs.

Idem,
s.6a,
enacted

(2) The said Act is amended by adding thereto the following section:

Costs of
unnecessary
steps in
proceedings

6a.-(1) Upon assessment between a solicitor and his client, the assessment officer may allow the costs of steps taken in proceedings that were in fact unnecessary where he is of the opinion that the steps were taken by the solicitor because, in his judgment, reasonably exercised, they were conducive to the interests of his client, and may allow the costs of steps that were not calculated to advance the interests of the client where the steps were taken by the desire of the client after being informed by his solicitor that they were unnecessary and not calculated to advance his interests.

Application

(2) This rule does not apply to solicitor and client costs payable out of a fund not wholly belonging to the client, or by a third party.

Idem,
s.14,
repealed

(3) Section 14 of the said Act is repealed.

Idem,
s.35(3),
amended

(4) Subsection 35(3) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 21, is amended by striking out "section 36 of the Judicature Act" in the second and third lines and inserting in lieu thereof "section 136 of the Courts of Justice Act, 1983".

Idem
s.35a,
enacted

(5) The said Act is further amended by adding thereto the following section:

Solicitors' Charging Orders

Charge on
property
for costs

35a.-(1) Where a solicitor has been employed to prosecute or defend a proceeding in the Supreme Court or the District Court, the court may, on motion, declare the solicitor to be entitled to a charge on the property recovered or preserved

through the instrumentality of the solicitor for the solicitor's fees, costs, charges and disbursements in the proceeding.

Conveyance
to defeat
is void

(2) A conveyance made to defeat or which may operate to defeat a charge under subsection (1) is, unless made to a person who purchased the property for value in good faith and without notice of the charge, void as against the charge.

Assessment
and recovery

(3) The court may order that the solicitor's bill for services be assessed in accordance with this Act and that payment shall be made out of the charged property.

R.S.O.1980,
c.491,s.3,
repealed

214.-(1) Section 3 of the Surrogate Courts Act, being chapter 491 of the Revised Statutes of Ontario, 1980, is repealed.

Idem
s.6,
amended

(2) Section 6 of the said Act is amended by striking out "\$100" in the fourth line and inserting in lieu thereof "\$10,000".

Idem
s.10,
repealed

(3) Section 10 of the said Act is repealed.

Idem
s.12,
amended

(4) Section 12 of the said Act is amended by adding thereto the following subsection:

Deputy
registrars

(1a) With the approval of the Attorney General, every surrogate court registrar may appoint in writing a deputy surrogate court registrar who may exercise and perform all the powers and duties of the surrogate court registrar.

Idem
ss.13,16,19,
repealed

(5) Sections 13, 16 and 19 of the said Act are repealed.

Idem
s.80,
re-enacted

(6) Section 80 of the said Act is repealed and the following substituted therefor:

Rules of Civil
Procedure

80.-(1) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the Supreme and District Courts may make rules for the surrogate courts in relation to the practice and procedure of the courts and may make rules for such courts, even though they alter or conform to the substantive law, in relation to,

- (a) conduct of proceedings in the courts;
- (b) joinder of claims and parties;
- (c) commencement of proceedings and service of process in or outside Ontario;
- (d) duties of registrars and other officers;
- (e) costs of proceedings, including security for costs;
- (f) any matter that is referred to in an Act as provided for by rules of court,

and, where an Act contains provisions in respect of practice and procedure, the Rules Committee of the Supreme and District Courts may make rules supplementing those provisions.

Application
of Rules of
Civil Procedure

(2) The Rules of Civil Procedure apply to surrogate courts, except in so far as the rules of the surrogate courts otherwise provide.

R.S.O.1980,
c.512,s.37(7),
amended

215.-(1) Subsection 37(7) of the Trustee Act, being chapter 512 of the Revised Statutes of Ontario, 1980, is amended by striking out "Registrar of the Supreme Court" in the second line and inserting in lieu thereof "Surrogate Clerk for Ontario".

- Idem
s.37(8),
amended
- (2) Subsection 37(8) of the said Act is amended by striking out "Registrar of the Supreme Court" in the second line and inserting in lieu thereof "Surrogate Clerk for Ontario".
- Idem
s.38(3-6),
repealed
- (3) Subsections 38(3), (4), (5) and (6) of the said Act are repealed.
- R.S.O.1980,
c.515;
1982,c.20,s.5;
1982,c.21,
repealed
216. The Unified Family Court Act, being chapter 515 of the Revised Statutes of Ontario, 1980, section 5 of the Children's Law Reform Amendment Act, 1982, being chapter 20 and the Unified Family Court Amendment Act, 1982, being chapter 21, are repealed.
- R.S.O.1980,
c.523,
repealed
217. The Vexatious Proceedings Act, being chapter 523 of the Revised Statutes of Ontario, 1980, is repealed.
- R.S.O.1980,
c.528,s.1(a),
repealed
218. Clause 1(a) of the Warehouse Receipts Act, being chapter 528 of the Revised Statutes of Ontario, 1980, is repealed.
- R.S.O.1980,
c.537,s.39,
repealed
219. Section 39 of the Woodmen's Lien for Wages Act, being chapter 537 of the Revised Statutes of Ontario, 1980, is repealed.
- Commencement
220. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
- Short title
221. The short title of this Act is the Courts of Justice Act, 1983.

COURTS OF JUSTICE ACT, 1983

EXPLANATORY MATERIAL

Ministry of the Attorney General

June 28, 1983

INTRODUCTION

The Courts of Justice Act, 1983 is intended to revise and consolidate the legislation that establishes Ontario's courts and regulates their proceedings. The Act will replace the Judicature Act, the County Courts Act, the County Judges Act, the County Court Judges' Criminal Courts Act, the General Sessions Act, the Unified Family Court Act, the Provincial Courts Act, the Provincial Court (Civil Division) Act and the Small Claims Courts Act. In addition, the Act will incorporate a number of other statutes that relate to specific kinds of court proceedings (e.g. the Constitutional Questions Act, the Matrimonial Causes Act and the Replevin Act).

The Courts of Justice Act, 1983 is closely related to new rules of court being prepared for the Supreme, County and District Courts. New rules were recommended by the Civil Procedure Revision Committee, chaired by the late Walter Williston, Q.C., in June 1980. Since that time, a subcommittee of the Rules Committee, chaired by Mr. Justice Morden of the Court of Appeal, has been working on the new Rules. They hope to complete their work in the coming months. The Courts of Justice Act, 1983 has been drafted using the terminology of the new Rules.

A section-by-section commentary on the Courts of Justice Act, 1983 follows.

SECTION 1

The definitions of "action" and "application" are designed to fit with the new Rules of Civil Procedure. In the new Rules, there will be only two kinds of civil proceedings. An "action" is the common form of proceeding which includes pleadings, discovery and trial. An "application" replaces the existing originating notice of motion procedure. Interlocutory motions during the course of a proceeding will no longer be called applications. The "District Court" referred to in the definitions is established by section 24 of the Act.

The term "defendant" is used in the Act and the new Rules to refer only to the person against whom an "action" is commenced.

"Hearing" is defined to include a trial in order to simplify drafting throughout the Act.

The definition of "motion" makes clear that motions are made in the course of a proceeding. As indicated above, the word "application" has a new meaning in the new Act and Rules and will no longer be used to refer to motions. A motion may also be made in an intended proceeding. For example, a motion for an interlocutory injunction may be made before an action is commenced if certain conditions are met.

The new Act and Rules use the word "order" as the general term for describing the mechanism by which courts give their decisions. Therefore, the term includes the final judgment in a proceeding and the decree that is issued in a divorce proceeding.

Like the term "defendant", the word "plaintiff" is used in the new Act and Rules only in the context of "actions".

The "Rules of Civil Procedure" is the name that will be given to the new rules of court applicable to the Supreme Court and the District Court.

SECTION 2

Subsection (1) is derived from section 2 of the Judicature Act. The existing provision defines the

Court's jurisdiction with reference to the 31st day of December, 1912. It is confusing to suggest that anything significant occurred to the Court's jurisdiction on that day. The date simply marks the day upon which an earlier version of the Judicature Act came into force which continued the Court's previous jurisdiction. That statute, in turn, defined the Court's jurisdiction with reference to earlier statutes.

An examination of those statutes indicates that the Supreme Court's jurisdiction includes the following:

- (a) The jurisdiction exercised by England's superior courts of common law (Queen's Bench, Common Pleas and Exchequer) on December 5, 1859: R.S.O. 1897, c.51, s.25; C.S.U.C. 1859, c.10, s.3.
- (b) The jurisdiction exercised in certain enumerated matters by England's Court of Chancery on March 4, 1837: R.S.O. 1897, c.51, s.26; (1837) 7 Wm. IV, c.2, s.2.
- (c) The jurisdiction exercised on June 10, 1857 by England's Court of Chancery as a court of equity to administer justice where no adequate remedy existed at law: R.S.O. 1897, c.51, s.28; (1857) 20 Vict., c.56, s.1.
- (d) The jurisdiction in respect of settled estates and minors' estates exercised by England's Court of Chancery on March 18, 1865: R.S.O. 1897, c.51, s.37; (1865) 28 Vict., c.17, s.1.
- (e) The equitable jurisdiction in matters of revenue exercised by England's Court of Exchequer on March 18, 1865: R.S.O. 1897, c.51, s.29; (1865) 28 Vict., c.17, s.2.
- (f) The jurisdiction exercised by Ontario's Courts of Queen's Bench, Common Pleas, Chancery, Assize, Oyer and Terminer, and Gaol Delivery on August 22, 1881: R.S.O. 1897, c.51, s.41; S.O. 1881, c.5, s.9.

The purpose of the new section is to describe the Supreme Court's jurisdiction more simply and comprehensively by stating that it has all the jurisdiction historically exercised by courts of common law and equity in England and Ontario.

A word should be added about admiralty jurisdiction. The Supreme Court never received the jurisdiction of the English Court of Admiralty. However, England's superior courts of common law had concurrent jurisdiction in admiralty matters and that jurisdiction has been inherited by the Supreme Court of Ontario: Shipman v. Phinn (1914), 31 O.L.R. 113; aff'd (1914), 20 D.L.R. 596 (C.A.).

The concluding words of the existing section, which state that the jurisdiction of the Supreme Court shall be exercised in the name of the Court, have been deleted as unnecessary. The forms of orders in the new Rules make clear that the High Court and the Court of Appeal both make their orders in the name of the Supreme Court.

Subsection (2) is derived from section 3 of the Judicature Act.

SECTION 3

This section is derived from section 4 of the Judicature Act. Subsection 3(2) changes the existing provision slightly so that the Associate Chief Justice may act in place of the Chief Justice when the Chief Justice is absent from Ontario (instead of Toronto).

SECTION 4

This section is derived from section 5 of the Judicature Act.

SECTION 5

This section is the same as section 7 of the Judicature Act.

SECTION 6

Subsections (1) and (2) are new provisions intended to implement, in Ontario, provisions of the Judges Act (Canada) that permit Chief Justices and Associate Chief Justices, after ten years in office, to elect to serve only as a judge.

Subsection (3) is the same as section 6 of the Judicature Act.

SECTION 7

Subsection (1) is derived from section 8 of the Judicature Act. Although the structure of the provision has been changed, there is no change in substance.

Subsection (2) is a new provision intended to clarify that, among themselves, judges of the Court of Appeal have rank and precedence in accordance with the dates of their appointments to the Court of Appeal.

SECTION 8

This section is derived from section 9 of the Judicature Act.

SECTION 9

This section replaces section 15, subsections 42(1) to (4) and section 43 of the Judicature Act. These provisions permit a judge of the Supreme Court to be assigned from time to time to sit in the branch of which he or she is not a member.

SECTION 10

This section is derived from section 118 of the Judicature Act.

SECTION 11

This section is derived from section 121 of the Judicature Act. Subsection (1) is slightly different from the opening words of subsection 121(1) of the existing Act to avoid the possible implication that provincial legislation makes District Court judges local judges of the High Court. Under section 96 of the Constitution Act, 1867, local judges can only be appointed by the federal government.

Subsection (2) provides that the jurisdiction of local judges in respect of motions and applications is to be conferred in the Rules of Civil Procedure. This replaces the concluding words of subsection 121(1) of the existing Act. The new Rules greatly expand the

jurisdiction of local judges to hear Supreme Court applications and, outside Toronto, motions in Supreme Court proceedings.

Subsection (3) is derived from subsection 121(3) of the Judicature Act.

Subsection (4) is derived from subsection 121(2) of the existing Act.

SECTION 12

Subsection (1) provides that the High Court is the branch of the Supreme Court that exercises original jurisdiction.

Subsection (2) states the appellate jurisdiction of the High Court in Supreme Court proceedings. A reference to the Divorce Act (Canada) is included to alert the reader that special appeal routes are provided in divorce proceedings.

Clauses (2)(a) and (b) are derived from existing rule 514(1). An appeal is provided to the High Court from an interlocutory order of a local judge only if the order could have been made by a master. This is because of the expanded jurisdiction that will be given to local judges in the new Rules. Where a local judge makes an interlocutory order that cannot be made by a master, the local judge will be exercising a jurisdiction that, under the existing law, can only be exercised by a judge of the High Court. Appeals from such orders will continue to be taken to the Divisional Court. Only if the interlocutory order could have been made by a master will the appeal from the local judge's decision go to the High Court.

Clause (2)(c) is derived from existing rule 516(2).

SECTION 13

Subsection (1) is derived from subsections 45(1) and (2) of the Judicature Act.

Subsection (2) is derived from subsection 45(3) of the Judicature Act.

Subsection (3) is derived from subsection 119(1) of the Judicature Act.

Subsection (4) is derived from subsection 48(6) of the Judicature Act. It also provides that, where the trial list for a sitting does not have a sufficient number of cases, the sitting may be transferred to an adjacent county or district.

SECTION 14

This section is derived primarily from section 17 of the Judicature Act. Subsection (1) makes clear that the section grants a right of appeal; it does not simply give the Court jurisdiction to hear appeals provided for elsewhere. The provision also makes clear that all these rights of appeal are subject to the special appeal provisions of the Divorce Act (Canada), not only the right of appeal from final orders of local judges under the Divorce Act.

Clause (1)(a) is a new provision intended to direct appeals from final orders of the High Court for \$25,000 or less to the Divisional Court. Under the existing law, final orders of a High Court judge are appealed to the Court of Appeal. The change is made in an effort to limit the workload of the Court of Appeal and thereby avoid having to increase the size of the Court. The new provision applies to both lump sum awards of \$25,000 or less and orders for periodic payments amounting to \$25,000 or less per year. Similar changes to the appeal routes from District Court orders are made in subsection 35(2).

Clause (1)(b) is derived from clause 17(b) of the Judicature Act. The new provision codifies the law as stated by the Divisional Court in Pitts v. Hawthorne (1979), 23 O.R. (2d) 369, by providing that no appeal lies from an interlocutory order of a High Court judge on an appeal from the District Court.

Clause (1)(c) corresponds to clause (1)(b) by providing a right of appeal for interlocutory orders of a local judge. As indicated earlier, the new Rules will permit local judges to make orders that, under the existing law, can only be made by judges of the High Court. Clause (1)(c) states that these orders will continue to be appealed to the Divisional Court.

Clauses (1)(d) and (e) are derived from clause 17(c) of the Judicature Act.

Clause 17(a) of the Judicature Act has not been included. Where another statute gives jurisdiction to the Divisional Court, there is no need for the grant of jurisdiction to be repeated in the Courts of Justice Act.

Subsection (2) is a new provision intended to deal with a problem that occasionally arises under the existing law. For example, on a motion, a master can make a final order and, on the same motion, an interlocutory order. Without subsection (2), the final order would be appealable to the Divisional Court, but the interlocutory order would be appealable to a judge of the High Court. Subsection (2) gives the Divisional Court jurisdiction to hear both appeals.

SECTION 15

Subsection (1) is derived from subsection 46(1) of the Judicature Act. The requirement that proceedings in the Divisional Court be presided over by the Chief Justice of the High Court, or his designee, has been deleted as unnecessary.

Subsection (2) is derived from subsection 46(2) of the Judicature Act. Clause (2)(b) has been added, since most appeals from small claims courts are now dealt with by one judge. With respect to all these appeals, the Chief Justice of the High Court retains the discretion to assign three judges.

Subsection (3) is derived from section 40 of the Judicature Act. The new provision is intended to permit more motions to be dealt with by one judge.

Subsection (4) replaces subsection 46(4) of the Judicature Act. Experience indicates that the Divisional Court rarely sits outside Toronto. However, the proposed provision will permit the Chief Justice of the High Court to arrange sittings of the Divisional Court anywhere in Ontario.

SECTION 16

This provision is derived largely from section 28 of the Judicature Act. Clause (1)(a) is derived from clause 28(1)(b) of the existing Act. Clause (1)(b) is derived from clause 28(1)(a) of the existing Act. Clause (1)(c) provides for an appeal from final orders of local judges since, under the new Rules, local judges will be making orders that are now made by High Court judges and appealed to the Court of Appeal. The exceptions in clauses (1)(b) and (c) recognize that, under clause 14(1)(a), final orders for \$25,000 or less will be appealed to the Divisional Court.

Subsection (2) is a new provision that is intended to resolve problems that have arisen where appeals from different orders made at a single hearing lie to different courts. The subsection provides that the Court of Appeal has jurisdiction to determine all of the appeals.

SECTION 17

Subsection (1) is derived from subsection 41(1) of the Judicature Act.

Subsection (2) is derived from subsection 41(2) of the Judicature Act. If an appeal from an order under section 10 of the Divorce Act is to be heard with an appeal that would otherwise have been heard by three judges of the Divisional Court, the appeals will be heard by three judges of the Court of Appeal.

Subsection (3) is derived from section 33 of the Judicature Act. The new provision is intended to permit more motions to be dealt with by one judge.

Subsection (4) is derived from section 44 of the Judicature Act. The new provision permits an exception to the general rule in the case of supernumerary judges.

Subsection (5) is derived from subsections 16(2) and 41(4) of the Judicature Act.

SECTION 18

This provision replaces the Constitutional Questions Act. The power to refer questions to a judge of the Supreme Court has been deleted, as recommended by the Ontario Law Reform Commission in its 1973 Report on Administration of Ontario Courts, Part I, p. 117. As the Report notes, since 1900, there has never been a reference to a judge of the Supreme Court.

SECTION 19

Subsection (1) is derived from subsection 96(1) of the Judicature Act.

Subsection (2) deals with a recommendation of the Gale Report on the Provincial Courts Act. Recommendation No. 1 of the Report (at p.72) was that provincial judges and masters should have at least five years membership at the bar before their appointment. Subsection (2) adopts a ten year requirement, the same requirement that applies to federally-appointed judges.

Subsection (3) provides that the jurisdiction of masters will be conferred in the Rules of Civil Procedure.

Subsection (4) is derived from subsection 100(1) of the Judicature Act.

Subsections (5), (6) and (7) are derived from section 99 of the Judicature Act.

Subsection (8) makes a number of provisions dealing with provincial judges applicable to masters. These provisions include those dealing with extra-judicial employment (s. 53), retirement (s.54), resignation (s.55), removal for cause (s.56), the Judicial Council (ss.57, 58 and 59) and the Supreme Court inquiry into the question of removal for cause (s.60). These provisions replace subsections 100(2) and (3), subsections 96(2), (3), and (4), section 97 and section 98 of the Judicature Act. Subsection (8) also makes section 65 applicable so that the Senior Master may, after ten years in office, elect to serve only as a master.

SECTION 20

Subsection (1) gives statutory recognition to the office of Registrar of the Supreme Court. Previously, the Registrar was appointed under section 83 of the Judicature Act, a general provision permitting the appointment of officers of the Supreme Court. Deputy Registrars of the Supreme Court may be appointed by the Lieutenant Governor in Council under the authority of clause 27(o) of the Interpretation Act.

Up to now, local registrars of the Supreme Court have also been appointed under section 83 of the Judicature Act. Subsection (2) gives specific statutory recognition to this office.

Subsection (3) is derived from section 85 of the Judicature Act. The new provision requires the approval of the Attorney General instead of the approval of the Lieutenant Governor in Council.

SECTION 21

Subsection (1) is derived from subsection 110(1) of the Judicature Act. The concluding words of the existing provision have been deleted as unnecessary. Perpetual succession and the ability to sue and be sued are automatic consequences of being a corporation sole.

Subsection (2) is a new provision simply stating that the Accountant is appointed by the Lieutenant Governor in Council.

Subsection (3) is derived from subsections 110(2) and 111(4) of the Judicature Act.

Subsections (4) and (5) are derived from existing rule 725, which will not appear in the new Rules of Civil Procedure.

Subsection (6) is derived from section 115 of the Judicature Act.

SECTION 22

Subsections (1) and (2) are derived from subsection 111(1) of the Judicature Act.

Subsection (3) is derived from subsection 111(5) of the Judicature Act.

Subsection (4) is derived from subsection 111(7) of the Judicature Act.

Subsection (5) is derived from subsection 111(2) of the Judicature Act.

Subsection (6) is derived from subsection 111(3) of the Judicature Act.

SECTION 23

This section is derived from section 83 of the Judicature Act.

SECTION 24

Subsection (1) replaces section 2 of the County Courts Act. It reorganizes the county and district courts in each county and district into a single province-wide court called the District Court of Ontario. The reorganization is intended to give the Chief Judge more flexibility in efficiently allocating judicial resources across the province. Federal amendments to the Criminal Code (Canada) will be requested so that the District Court can also assume the jurisdiction exercised by county and district court judges' criminal courts and courts of general sessions of the peace. The reorganization implements a recommendation of the Ontario Law Reform Commission made in its 1973 Report on Administration of Ontario Courts, Part I, p. 162.

Subsection (2) is derived from section 3 of the County Courts Act.

SECTION 25

Subsection (1) replaces sections 1 to 4 and subsection 16(1) of the County Judges Act. The District Court will consist of the Chief Judge, the Associate Chief Judge, a senior judge for each county and district designated by the Lieutenant Governor in Council as requiring more than one judge, and such number of other judges as is fixed by regulation.

Subsection (2) permits the Lieutenant Governor in Council to make regulations fixing the number of judges of the District Court, designating counties and districts to which more than one judge shall be assigned and establishing District Court regions. Clause (2)(c) is derived from section 15 of the County Judges Act.

Subsection (3) is a transitional provision intended to permit existing judges to preside over the District Court without the necessity of obtaining new appointments.

Subsection (4) is a transitional provision intended to preserve the rights and privileges of judges appointed before the coming into force of the Courts of Justice Act.

SECTION 26

Subsection (1) is derived from section 11 of the County Courts Act and subsection 16(4) of the County Judges Act.

Subsection (2) requires the Chief Judge to assign at least one judge to each county and district.

Subsection (3) replaces subsection 16(3) of the County Judges Act. The Associate Chief Judge of the District Court is given power to perform duties of the Chief Judge when the Chief Judge is absent or unable to act.

SECTION 27

Subsection (1) states the authority of the senior judges to supervise sittings and assign judicial duties in their county or district. This provision replaces section 7 of the County Judges Act.

Subsection (2) is a transitional provision that preserves the authority of existing senior judges to supervise sittings and assign judicial duties in their county or district.

Subsection (3) is derived from subsection 16(5) of the County Judges Act.

SECTION 28

Subsection (1) is a new provision intended to implement, in Ontario, provisions of the Judges Act (Canada) that permit a Chief Judge or Associate Chief Judge, after ten years in office, to elect to serve only as a judge.

Subsection (2) is derived from subsection 5(1) of the County Judges Act. The wording has been changed slightly to conform with the language of section 20.2 of the Judges Act (Canada).

SECTION 29

This provision is derived from section 6 of the County Judges Act.

SECTION 30

This provision is derived from subsection 16(8) of the County Judges Act.

SECTION 31

Subsection (1) deals with the "action" jurisdiction of the District Court. It replaces subsection 14(1) of the County Courts Act. The existing provision contains a long list of specific subjects over which county and district courts have jurisdiction. The jurisdiction of the courts is so broad that it is much simpler to state that they have jurisdiction to hear and determine any action, subject to specific exceptions. Clause (1)(a) states the main exception; the District Court will not have jurisdiction in actions where the sum claimed or the value of the property that is the subject of the action exceeds \$25,000. Clause (1)(b) states the obvious principle that the District Court cannot hear actions that are required by statute to be heard by another court.

The revision of subsection 14(1) of the County Courts Act makes several changes in the court's jurisdiction. The major change is an increase in the court's monetary jurisdiction from \$15,000 to \$25,000.

Another change concerns admiralty jurisdiction. Under the existing Act, the Court of Appeal has ruled that the county and district courts do not have admiralty jurisdiction: Heath v. Kane (1976), 10 O.R.(2d) 716. An opposite conclusion has been reached in British Columbia by the B.C. Court of Appeal: Balfour Guthrie (Canada) Ltd. v. Far Eastern Steamship Co. (1978), 5 B.C.L.R. 60. To clarify this issue, the new Act states that the District Court can hear any action and does not exclude admiralty actions. The Supreme Court also has jurisdiction over admiralty actions: Shipman v. Phinn (1914), 31 O.L.R. 113; aff'd (1914), 20 D.L.R. 596 (C.A.). By giving the District Court jurisdiction in admiralty actions for less than \$25,000, it will not be necessary for persons involved in minor boating accidents to bring their actions in the Supreme Court.

In other changes, the District Court will no longer be prevented from hearing actions for libel (see clause 14(1)(b) of the County Courts Act), partnership actions (see clause 14(1)(g) of the County Courts Act) or actions by legatees under a will for the recovery of money or property where the estate of the testator exceeds \$200,000 (see clause 14(1)(h) of the County Courts Act).

Subsection (2) is intended to clarify that the District Court cannot grant prerogative remedies. Strictly speaking, the provision is probably not necessary, because prerogative remedies are claimed in "applications" and section 31 deals only with the "action" jurisdiction of the District Court. However, subsection (2) is included to prevent any misunderstanding.

SECTION 32

This provision provides a mechanism whereby the District Court may assume jurisdiction over monetary claims in excess of \$25,000. It replaces subsections 14(2) to (5) of the County Courts Act. Subsection (1) is derived from subsection 14(2) of the County Courts Act.

Subsection (2) is derived from subsection 14(3) and section 19 of the County Courts Act.

Subsection (3) is derived from subsection 14(4) of the County Courts Act. The new provision does not require a motion if the only claim is for money. In such cases, the action can be transferred on requisition. A motion will be required only if a determination of the value of

property must be made in order to decide if the action is within the District Court's monetary jurisdiction.

Subsection (4) is derived from subsection 14(5) of the County Courts Act.

Subsection (5) is derived from section 16 of the County Courts Act.

Subsection (6) is derived from section 15 of the County Courts Act.

Subsection (7) clarifies the effect of a transfer on other proceedings related to the action.

SECTION 33

This is a new provision designed to permit actions commenced in the Supreme Court to be transferred to the District Court. Subsection (1) permits an action to be transferred on requisition with the consent of all parties. Subsection (2) provides for an order of the Supreme Court transferring an action to the District Court where it appears that the amount of the judgment in the action or the value of the property that is the subject of the action will be within the monetary jurisdiction of the District Court.

SECTION 34

Subsection (1) is derived from sections 20 and 26 of the County Courts Act.

Subsection (2) is derived from section 27 of the County Courts Act. The \$100 maximum fine in the existing Act has been increased to \$10,000. This is the first increase in over 125 years.

SECTION 35

Subsection (1) is derived from sections 31 and 34 of the County Courts Act.

Subsection (2) is a new provision that corresponds to clause 14(1)(a). It provides that orders for \$25,000 or less will be appealed to the Divisional Court.

Subsection (3) is derived from section 40 of the County Courts Act.

Subsection (4) clarifies an issue that does not appear to be dealt with under the existing statute law. It codifies the existing practice of appealing an assessment of costs in a District Court proceeding to the High Court.

SECTION 36

Subsection (1) is derived from subsection 4(1) of the County Courts Act.

Subsection (2) is derived from section 85 of the Judicature Act.

SECTION 37

This section is derived from section 2 of the Unified Family Court Act.

SECTION 38

This section is derived from subsections 3(1) to (4) of the Unified Family Court Act.

SECTION 39

Subsection (1) is derived from subsection 4(1) of the Unified Family Court Act.

Subsection (2) is a new provision that gives the Unified Family Court authority to hear a motion for interim custody or interim support where, although the proceeding is being conducted outside Hamilton-Wentworth in the Supreme Court or the District Court, the motion is required to be heard in Hamilton-Wentworth. For example, assume that a divorce proceeding is commenced in the Supreme Court in Toronto by a petitioner who resides in Toronto against a respondent who resides in Hamilton. Under the new Rules, if the petitioner wished to make a motion for interim relief, the motion would normally be heard in Hamilton. Subsection (2) provides that, instead of being heard by the Supreme Court in Hamilton, such a motion would be heard by the Unified Family Court.

Subsection (3) is derived from subsection 4(3) of the Unified Family Court Act.

Subsection (4) is derived from subsection 7(2) of the Unified Family Court Act.

SECTION 40

This section is derived from section 5 of the Unified Family Court Act.

SECTION 41

Subsection (1) is derived from section 6 of the Unified Family Court Act.

Subsection (2) is derived from subsection 23(3) of the Unified Family Court Act.

SECTION 42

Subsection (1) is derived from subsection 8(1) of the Unified Family Court Act.

Subsection (2) is derived from subsection 12(1) of the Unified Family Court Act. The maximum fine that may be imposed for contempt has been increased to \$10,000. This corresponds to a similar change made for the District Court in subsection 34(2) of the Courts of Justice Act.

Subsection (3) is derived from subsection 8(3) of the Unified Family Court Act.

SECTION 43

This section is derived from section 9 of the Unified Family Court Act.

SECTION 44

This section is derived from section 14 of the Unified Family Court Act.

SECTION 45

Subsection (1) is derived from subsection 15(1) of the Unified Family Court Act.

Subsection (2) is a new provision intended to clarify appeal routes when the Unified Family Court makes an order that, outside Hamilton-Wentworth, would have been within the jurisdiction of the Supreme Court or District Court.

Subsection (3) is derived from subsection 15(2) of the Unified Family Court Act. The concluding words of subsection 15(2) of the existing Act have been deleted as unnecessary in light of section 142 of the Courts of Justice Act.

Subsection (4) is derived from subsection 15(3) of the Unified Family Court Act. The new provision states that orders for \$25,000 or less would be appealed to the Divisional Court. See also clause 14(1)(a) and subsection 35(2).

SECTION 46

This section is derived from section 16 of the Unified Family Court Act.

SECTION 47

This section is derived from section 17 of the Unified Family Court Act.

SECTION 48

This section is derived from section 18 of the Unified Family Court Act.

SECTION 49

This section is derived from section 19 of the Unified Family Court Act.

SECTION 50

This section is derived from section 22 of the Unified Family Court Act.

SECTION 51

Subsection (1) replaces section 21 of the Unified Family Court Act with a new provision modelled on section 93 of the Courts of Justice Act.

Subsection (2) is a new provision intended to clarify that the rules of the Supreme Court, the District Court and the Provincial Court (Family Division) do not apply to the Unified Family Court.

SCHEDULE

The Schedule to Part III is derived from the Schedule to the Unified Family Court Act. Part IV of the Child Welfare Act has been added to the Schedule because offences under that Part are tried by the Unified Family Court. The reference to the Minors Act has been deleted in light of the repeal of the Minors Act by subsection 4(1) of the Children's Law Reform Amendment Act, 1982.

SECTION 52

Subsection (1) is derived from section 2 of the Provincial Courts Act.

Subsection (2) is new and deals with a recommendation of the Gale Report on the Provincial Courts Act. Recommendation No. 1 of the Report (at p. 72) was that provincial judges should have at least five years membership at the bar of any province of Canada before their appointment. The proposed provision provides for a ten year qualification requirement. This is the same requirement that applies to federally-appointed judges.

SECTION 53

This section replaces section 12 of the Provincial Courts Act. Subsection (1) requires a provincial judge to devote his or her whole time to judicial duties unless authorized by the Lieutenant Governor in Council (e.g. for the purpose of serving on a task force or commission of inquiry). Subsection (2) permits a judge to continue to act as an arbitrator, conciliator or member of a police commission if he obtained the consent of the Attorney General under subsection 12(2) of the Provincial Courts Act before the coming into force of the Courts of Justice Act.

SECTION 54

This section is derived from section 5 of the Provincial Courts Act.

SECTION 55

This section is derived from section 6 of the Provincial Courts Act. The new provision requires the resignation to be delivered to the Lieutenant Governor instead of the Attorney General. Recommendation No. 11 of the Gale Report (at p. 74) was that a judge's resignation should not be effective until it was delivered and accepted. The reason for this recommendation (discussed at p. 74 of the Gale Report) was to permit a Judicial Council investigation to continue until such time as the resignation had been formally accepted. However, the Judicial Council's purpose is to investigate complaints against judges. Therefore, once a judge has taken the steps necessary to cease being a judge, there is no reason for the Judicial Council to continue its investigation. For this reason, the existing procedure has been retained. Depriving the Judicial Council of jurisdiction once a judge has resigned would not, of course, prevent further investigation by the police if possible criminal conduct was involved.

SECTION 56

Subsection (1) replaces subsection 4(1) of the Provincial Courts Act. Clause (1)(a) implements Recommendation No. 5 of the Gale Report.

Clause (1)(b) deals with Recommendation No. 2 of the Gale Report (p. 73). The provision makes the grounds for removal of provincial judges essentially the same as the grounds for removal of federal judges. It also makes clear that a judge may be removed only if removal is recommended by the Supreme Court inquiry.

Subsection (2) replaces subsection 4(3) of the Provincial Courts Act. The new provision permits the order removing a provincial judge to be made only on the address of the Legislative Assembly.

SECTION 57

Subsection (1) is derived from subsection 7(1) of the Provincial Courts Act. The Chief Judge of the District Court and the Chief Judge of the Provincial Court (Civil Division) have been added as members of the Judicial Council.

Subsection (2) permits the Senior Master to participate in Judicial Council proceedings involving a master.

Subsection (3) is derived from subsection 7(3) of the Provincial Courts Act.

Subsection (4) is derived from subsection 7(2) of the Provincial Courts Act.

Subsection (5) adopts part of Recommendation No. 12 of the Gale Report (p. 74). The Gale Report also recommended that the legislation provide for a permanent secretary to the Judicial Council. Such a position may be provided for under subsection (4), so there is no need for the Act to make specific mention of a permanent secretary.

SECTION 58

Subsection (1) is derived from clauses 8(1)(a) and (b) of the Provincial Courts Act. Clause (1)(b) permits the Judicial Council to investigate any complaint against a provincial judge. Recommendation No. 6 of the Gale Report (p. 74) was that this section should include the lengthy list of grounds under which a judge may be removed from office. This seems unnecessary. A person should be able to make any complaint he or she likes to the Judicial Council; it is then the function of the Judicial Council to determine if the complaint warrants an investigation (see subsection 59(1) of the Courts of Justice Act).

Subsection (2) is derived from subsection 8(6) of the Provincial Courts Act.

SECTION 59

Subsection (1) is derived from clause 8(1)(c) of the Provincial Courts Act.

Subsection (2) is derived from subsection 8(2) of the Provincial Courts Act.

Subsection (3) is derived from subsection 8(4) of the Provincial Courts Act. It implements part of Recommendation No. 7 of the Gale Report (p. 74). It also makes clear that the Attorney General may disclose the fact that an investigation has been undertaken.

Subsection (4) implements the part of Recommendation No. 7 of the Gale Report that is not dealt with in subsection (3). Enforcement of an order not to disclose information is accomplished by section 8 of the Public Inquiries Act.

Subsection (5) is derived from subsection 8(5) of the Provincial Courts Act. This implements recommendation No. 10 of the Gale Report (p. 74).

Subsection (6) implements Recommendation No. 8 of the Gale Report (p. 74).

Clause (7)(a) implements Recommendation No. 4 of the Gale Report (p. 73). It is intended to make clear that, aside from recommending an inquiry before a Supreme Court judge, the Judicial Council does not have the power to impose sanctions against a judge. The clause is derived from subsection 8(3) of the Provincial Courts Act.

Clause (7)(b) is a modified version of Recommendation No. 13 of the Gale Report (p. 75). The power to order costs has been changed to a power to recommend compensation for costs.

Subsection (8) implements part of Recommendation No. 9 of the Gale Report (p. 74). The other part is dealt with in subsection (10).

The Gale Report did not specifically recommend a legislative provision relating to the rights of a judge during an investigation. The Report suggested a provision, however, if it was felt that one was necessary (see p. 46). The Report's suggested provision included a right to cross-examine all witnesses. If this provision was used, it would require a formal hearing at which every item of information could be subjected to cross-examination by the judge. This would defeat the informal nature of the Judicial Council's proceedings, something that Chief Justice Gale wished to preserve. Therefore, subsection (9) gives the judge a right to be heard before any report is made to the Attorney General, but does not give a right to cross-examine every person who provided information during the course of the investigation.

Subsection (10) implements the second part of Recommendation No. 9 of the Gale Report (p. 74).

SECTION 60

Subsections (1) and (2) are derived from subsection 4(2) of the Provincial Courts Act. Since subsection (1) provides that the inquiry will always be held by one judge, it is not necessary to consider Recommendation No. 14 of the Gale Report (p. 75) which suggested that, where more than one judge is appointed, an uneven number should be appointed. The practice has traditionally been to appoint one judge.

Subsection (2) adopts Recommendation No. 16 of the Gale Report (p. 75). The existing Act provides that Part II of the Public Inquiries Act applies to the inquiry. The Gale Report recommended that Part I should also apply. Subsection (2) would also allow Part III to apply if, under subsection 15(1) of the Public Inquiries Act, the Lieutenant Governor in Council so declares. Part III deals with warrants for the apprehension of witnesses and search warrants. Recommendation No. 15 of the Gale Report (p. 75) was that, prior to the commencement of the inquiry, the judge should be provided with a brief statement of the complaint that has been made against him. Subsection (2) makes a specific provision unnecessary to implement this recommendation, since subsection 5(2) of the Public Inquiries Act requires notice of allegations of misconduct to be given. This also makes clause 4(1)(b) of the Provincial Courts Act unnecessary.

Subsection (3) provides, in accordance with the Gale Report (see discussion at p. 67), that the inquiry cannot recommend that a judge be reprimanded; it can only deal with the question of removal from office. Clause (3)(b) is a modified version of Recommendation No. 17 of the Gale Report (p. 75). The power to order costs has been changed to a power to recommend compensation for costs.

Subsection (4) does not adopt Recommendation No. 18 of the Gale Report (p. 75). Since the Public Inquiries Act requires the inquiry to be held in public in most circumstances, the report of the inquiry should be public.

SECTION 61

Subsection (1) is derived from clauses 9(1)(a) and (c) of the Provincial Courts Act.

Subsection (2) is derived from subsection 9(3) of the Provincial Courts Act. Clause 9(3)(c) of the existing Act has been deleted, since a judge who was acting before 1968 will now have acted for more than 5 years and, therefore, will be covered by clause (2)(b) of the new Act.

Subsection (3) is derived from clause 9(1)(d) of the Provincial Courts Act.

SECTION 62

This provision is the same as subsection 9(2) of the Provincial Courts Act.

SECTION 63

Subsection (1) is derived from subsection 10(1) of the Provincial Courts Act and section 5 of the Provincial Court (Civil Division) Act. The senior judicial officer of the Provincial Court (Civil Division) will now be a chief judge.

Subsection (2) is derived from subsection 10(2) of the Provincial Courts Act.

Subsection (3) is derived from subsection 10(4) of the Provincial Courts Act. The new provision divides authority over the Provincial Court (Civil Division) between the Chief Judge of the Provincial Court (Civil Division) and the Chief Judge of the District Court.

Subsection (4) is derived from subsection 10(3) of the Provincial Courts Act.

Subsection (5) is a new provision that permits associate chief judges to act when the chief judge is absent or unable to act.

SECTION 64

Subsection (1) is derived from section 11 of the Provincial Courts Act. The new provision requires the designation to be made by the Lieutenant Governor in Council, instead of the Attorney General.

Subsection (2) is new and is modelled on the authority of a senior judge of the District Court.

SECTION 65

This is a new provision that gives chief judges, associate chief judges and senior judges the right, after ten years in that office, to elect to serve only as a provincial judge. They may also make this election if they have reached retirement age.

SECTION 66

This section is derived from section 14 of the Provincial Courts Act. It amalgamates the provincial courts (criminal division) throughout the province into a single province-wide court called the Provincial Court (Criminal Division).

SECTION 67

This section is derived from section 15 of the Provincial Courts Act.

SECTION 68

This section is derived from section 16 of the Provincial Courts Act.

SECTION 69

This section is derived from subsection 18(1) of the Provincial Courts Act. It amalgamates the provincial offences courts into a single province-wide court called the Provincial Offences Court.

SECTION 70

This section is derived from subsection 18(2) of the Provincial Courts Act. The new provision does not purport to confer jurisdiction; it simply clarifies that the court performs functions under other statutes that do confer jurisdiction.

SECTION 71

This section is derived from section 19 of the Provincial Courts Act.

SECTION 72

This section is derived from section 20 of the Provincial Courts Act.

SECTION 73

This section is derived from section 21 of the Provincial Courts Act.

SECTION 74

Section 17 of the Provincial Courts Act establishes a rules committee for the provincial courts (criminal division) and, by section 22 of that Act, the same rules committee makes rules for the provincial offences courts. However, subsection 438(1.1) of the Criminal Code (Canada) provides for the making of rules in criminal proceedings.

To avoid any constitutional conflict, the Courts of Justice Act does not continue the rules committee of the provincial courts (criminal division). Instead, subsections 74(1) and (2) of the Courts of Justice Act create a new rules committee to make rules for the Provincial Offences Court. Rules for the Provincial Court (Criminal Division) will be made under the Criminal Code.

Subsection (3) is derived from section 22 of the Provincial Courts Act.

SECTION 75

This section is derived from subsection 23(1) of the Provincial Courts Act. It amalgamates the provincial courts (family division) into a single province-wide court called the Provincial Court (Family Division).

SECTION 76

This section is derived from subsection 23(2) of the Provincial Courts Act. Clause (a) has been simplified, since the Juvenile Delinquents Act (Canada) has been proclaimed in force throughout Ontario. Clause (c) has also been simplified. It does not purport to confer jurisdiction; it simply clarifies that the court performs functions under other statutes that do confer jurisdiction. In addition, the references in clause (c) to "juvenile courts" have been deleted, since provincial statutes no longer refer to "juvenile courts" and the only federal statute to use this term, the Juvenile Delinquents Act, is dealt with in clause (a).

SECTION 77

This section is derived from section 25 of the Provincial Courts Act.

SECTION 78

This section is derived from subsections 32(1) to (4) of the Provincial Courts Act. Subsection (3) has been expanded to include more specific rule-making authority, based on section 93 of the Courts of Justice Act.

SECTION 79

Subsection (1) is derived from subsection 2(1) of the Provincial Court (Civil Division) Act and sections 3, 4 and 6 of the Small Claims Courts Act. It amalgamates the small claims courts throughout the province with the Provincial Court (Civil Division).

Subsection (2) is derived from subsection 2(2) of the Provincial Court (Civil Division) Act and section 14 of the Small Claims Courts Act.

Subsection (3) is derived from section 15 of the Small Claims Courts Act and subsection 6(3) of the Provincial Court (Civil Division) Act.

SECTION 80

Subsection (1) is derived from section 55 of the Small Claims Courts Act.

Subsection (2) is derived from subsection 6(1) of the Provincial Court (Civil Division) Act.

Subsection (3) is derived from section 57 of the Small Claims Courts Act.

SECTION 81

This section is derived from section 100 of the Small Claims Courts Act. It is similar to clauses 10(a) and 23(3) of the Statutory Powers Procedure Act.

SECTION 82

This section is derived from section 98 of the Small Claims Courts Act.

SECTION 83

This section is derived from subsection 102(1) of the Small Claims Courts Act.

SECTION 84

This section is derived from section 108 of the Small Claims Courts Act.

SECTION 85

This section is derived from subsection 7(2) of the Provincial Court (Civil Division) Act. The new provision is not limited to transitional situations. It is intended to apply to any action brought in the Supreme Court or the District Court that is within the jurisdiction of the Provincial Court (Civil Division).

SECTION 86

This section is derived from clause 190(1)(a) of the Small Claims Courts Act and clause 9(1)(b) of the Provincial Court (Civil Division) Act.

SECTION 87

Subsections (1) and (2) create a rules committee for the Provincial Court (Civil Division).

Subsection (3) replaces clauses 9(1)(a) and (c) of the Provincial Court (Civil Division) Act and section 190 of the Small Claims Courts Act with specific rule-making authority modelled on section 93 of the Courts of Justice Act.

SECTION 88

Subsections (1) and (2) are derived from subsections 33(1) and (2) of the Provincial Courts Act.

Subsections (3) and (4) are derived from section 20 of the Small Claims Courts Act.

SECTION 89

This section is derived from section 31 of the Provincial Courts Act.

SECTION 90

This section is derived from section 34 of the Provincial Courts Act.

SECTION 91

This section gives statutory recognition to the Ontario Provincial Courts Committee, established by order in council in 1980 to make recommendations concerning remuneration and other benefits for provincial judges.

SECTION 92

Subsection (1) is derived from subsection 116(1) of the Judicature Act. The name of the Rules Committee has been expanded to distinguish it from the other rules committees. There are a few changes in the composition of the Rules Committee:

The number of Supreme Court judges on the committee is increased from eight to ten. In addition to the four chief and associate chief justices, there will be two Court of Appeal judges and four High Court judges.

The Associate Chief Judge of the District Court is added as a member of the committee.

Two additional District Court judges are added to the committee. The District Court judges will be appointed to the committee by the Chief Judge of the District Court.

A sheriff or local registrar is added to the committee, to provide the committee with additional expertise on rules having an impact on the workings of the court offices.

The number of lawyers on the committee has been increased to provide additional expertise from the practicing bar.

Subsections (2) to (4) are derived from subsections 116(2) to (5) of the Judicature Act. In future, all appointed members of the Rules Committee will be appointed for three years.

Subsections (5) and (6) are derived from subsections 116(6) and (7) of the Judicature Act.

SECTION 93

Section 93 replaces subsections 116(10), (11) and (12) of the Judicature Act. The provision has been drafted after a complete review of the new Rules of Civil Procedure.

SECTION 94

This section is derived from subsections 10(1), 84(1) and 103(2) of the Judicature Act, section 11 of the County Judges Act, sections 10 and 13 of the Surrogate Courts Act, section 20 of the Unified Family Court Act, subsection 3(1) of the Provincial Courts Act and subsection 11(2) of the Small Claims Courts Act. The new provision allows the oath of office to be taken in either the English or French language.

SECTION 95

Provincial statutes often give jurisdiction to "a judge of the county or district court" or "a judge of the Supreme Court", instead of simply referring to "the court". This form of language arises particularly frequently in statutes that can be traced to the latter part of the 19th century. Over the years, provisions giving jurisdiction to "a judge" instead of "a court" generated a great deal of litigation on the issue of whether the judge was to act as the court or as a persona designata. In many cases, it was decided that the judge was acting as persona designata.

Where a judge acts as persona designata, several consequences follow. Since the judge is not acting as the court, the rules of court do not apply, the powers of the court do not apply and no appeal may be taken. These consequences have resulted in considerable confusion. Some of the most serious drawbacks of the persona designata concept have been dealt with in the Judges' Orders Enforcement Act. That Act provides for enforcement of the orders of a judge acting as persona designata, for the judge to have jurisdiction to award costs and for an appeal from the judge's order. However, the Act leaves many other issues unresolved.

The concept of judges acting persona designata has been severely criticized. In recent years, a series of Supreme Court of Canada decisions has dramatically altered the law of persona designata: Herman v. Deputy Attorney General of Canada, [1979] 1 S.C.R. 729; Reference re Residential Tenancies Act, [1981] 1 S.C.R. 714; Minister of Indian Affairs and Northern Development v. Ranville (1982), 44 N.R. 616. These cases establish the principle that a judge will be acting persona designata only if there is an express provision to that effect. This test effectively abolishes the concept of persona designata. To eliminate any lingering doubts, section 95 of the Courts of Justice Act provides that, where an adjudicative function is given by statute to a judge or officer of a court, the jurisdiction shall be deemed to be given to the court.

SECTION 96

Subsection 100(4) of the Judicature Act and section 13 of the Provincial Courts Act provide that, subject to any additional common law defences, the Public Authorities Protection Act applies to masters and provincial judges in the same manner as it applies to justices of the peace. Section 2 of that Act protects a justice of the peace from liability where he or she acts within jurisdiction, unless the act was done maliciously and without reasonable or probable cause. However, under subsection 3(1) of that Act, a justice of the peace is absolutely liable if he or she acts without jurisdiction. These provisions essentially codify the common law that was traditionally thought to be applicable to all inferior court judges.

The distinctions that the traditional common law made between different categories of judges and acts done within and outside jurisdiction were criticized by the English Court of Appeal in Sirros v. Moore, [1974] 3 All E.R. 776. The English Court of Appeal's decision has been cited with approval in two Ontario cases: Re Clendenning and Board of Police Commissioners for City of Belleville (1977), 15 O.R.(2d) 97 at 101 (Div. Ct.); Unterreiner v. Wilson (1982), 40 O.R. (2d) 197 (H.C.J.).

The new section adopts the principles of the English Court of Appeal decision, and provides that all judges have the same immunity from liability as judges of the Supreme Court. The new section also applies to masters.

SECTION 97

This section is derived from section 2 of the Extra-Judicial Services Act.

SECTION 98

This section is derived from section 3 of the Extra-Judicial Services Act.

SECTION 99

Subsections (1) and (2) are derived from subsection 107(1) of the Judicature Act. The Attorney General, as the member of the Executive Council responsible for the administration of justice, is given authority to delineate the offices that the Inspector may inspect, rather than the Lieutenant Governor in Council.

Subsection (3) is derived from subsections 108(2) and (3) of the Judicature Act.

Subsection (4) is derived from subsection 108(4) of the Judicature Act, section 19 of the Surrogate Courts Act, clause 22(b) of the Unified Family Court Act, clause 34(1)(b) of the Provincial Courts Act and section 179 of the Small Claims Courts Act. The new provision states that documents will be disposed of in accordance with the directions of the Inspector. The criteria for disposing of documents have been prepared by the Inspector and approved by the chief judges of the various courts.

SECTION 100

Subsections (1) and (2) are derived from subsection 109(1) of the Judicature Act.

Subsection (3) is intended to restate, in the terminology of the new Act and Rules, the provisions of subsection 109(2) of the Judicature Act.

Subsection (4) is derived from subsection 109(3) of the Judicature Act. The new provision requires costs recovered by the Official Guardian to be paid into the Consolidated Revenue Fund.

Subsection (5) is derived from subsection 109(15) of the Judicature Act.

Subsection (6) is derived from existing rule 724, which will not appear in the new Rules.

Subsection (7) is derived from existing subrule 737(2), which will not appear in the new Rules.

Subsection (8) is derived from existing subrule 737(6), which will not appear in the new Rules.

Subsection (9) is derived from subsection 109(12) of the Judicature Act.

SECTION 101

Taxing officers are now appointed under section 83 of the Judicature Act, a general provision dealing with the appointment of officers of the Supreme Court. Subsection (1) gives specific statutory recognition to this office. It provides that the Registrar of the Supreme Court, each master, local registrar and deputy local registrar and the clerk of the Unified Family Court is an assessment officer. The new Act and Rules replace the term "taxing officer" with the more modern term "assessment officer".

Subsection (2) provides for the appointment of additional assessment officers.

Subsection (3) gives every assessment officer the jurisdiction conferred by the Rules of Civil Procedure.

SECTION 102

Subsections (1) and (2) are derived from subsections 104(1) and (2) of the Judicature Act and section 10 of the County Courts Act.

Subsection (3) replaces subsection 104(7) of the Judicature Act. It is modelled on subsections 20(3) and 36(2) of the Courts of Justice Act, which are derived from section 85 of the Judicature Act.

Subsection (4) is a new provision intended to make clear that official examiners are officers of the courts. This provision ties in with section 104, which permits officers to administer oaths.

SECTION 103

This section replaces the provisions of subsection 14(1) of the County Judges Act concerning court reporters. It also provides specifically for the appointment of interpreters and translators and replaces the provisions of section 4 of the County Courts Act, section 17 of the Unified Family Court Act and subsection 33(3) of the Provincial Courts Act concerning the appointment of court staff.

SECTION 104

This section is derived from section 124 of the Judicature Act.

SECTION 105

This section is derived from section 112 of the Judicature Act. The new section applies to money held by any officer, not just the Accountant or the Official Guardian.

SECTION 106

Subsection (1) is derived from subsection 87(1) of the Judicature Act and subsection 10(1) of the County Judges Act.

SECTION 107

This section introduces Part VII of the Courts of Justice Act. The Part applies generally to all civil proceedings. Subsections (2) and (3) list provisions that are also applicable, respectively, to criminal proceedings and to proceedings under the Provincial Offences Act.

SECTION 108

This section revises the statutory provisions dealing with law and equity. It is similar in some respects to section 49 of the English Supreme Court Act 1981 (U.K.), 1981, c.54. The section is intended to simplify the old provisions dealing with law and equity.

Subsection (1) replaces paragraphs 1, 3, 4, 5 and 7 of section 18 of the Judicature Act. These paragraphs state that courts shall recognize all claims and defences, whether arising under the common law or equity, asserted by both plaintiffs and defendants. This is implicit in the statement that courts shall administer concurrently all rules of equity and the common law.

Subsection (2) is derived from section 25 of the Judicature Act.

Subsection (3) is derived from section 26 of the Judicature Act.

SECTION 109

This section is derived from paragraph 2 of section 18 of the Judicature Act.

SECTION 110

This section is derived from section 22 of the Judicature Act.

SECTION 111

This section is derived from section 21 of the Judicature Act.

SECTION 112

This section is derived from section 79 of the Judicature Act.

SECTION 113

This section is derived from subsection 19(1) of the Judicature Act. The concluding words of the existing subsection, dealing with waste and trespass, have been deleted as redundant. Injunctions are available to restrain any unlawful act.

SECTION 114

This section is derived from section 20 of the Judicature Act. Slight changes in language have been made to conform with the terminology of the new Act and Rules.

SECTION 115

Subsection (1) is derived from subsection 38(1) of the Judicature Act.

Subsection (2) is a new provision intended to make clear that, when a certificate of pending litigation is issued in respect of land registered under the Land Titles Act, the certificate itself will be registered on title. It will no longer be necessary to obtain a caution from the land registrar.

Subsections (3), (4) and (5) are derived from subsections 38(3), (4) and (5) of the Judicature Act.

Subsection (6) is derived from subsections 39(1), (2) and (3) of the Judicature Act.

Subsection (7) is derived from subsection 39(6) of the Judicature Act.

Subsection (8) indicates that the new section also applies to certificates and cautions registered after November 24, 1977 and before the Courts of Justice Act comes into force.

Subsection (9) is derived from subsection 38(6) of the Judicature Act. It provides that subsections (4) and (5) do not apply to certificates or cautions registered before November 25, 1977.

SECTION 116

Subsection (1) is derived from section 2 of the Replevin Act.

Subsection (2) is a new provision making a person who obtains an interim order for possession of personal property liable for any loss suffered if it ultimately turns out that he or she was not entitled to the property.

SECTION 117

This section replaces the provisions of section 77 of the Judicature Act, which deal with medical examinations. Subsection (1) is derived from subsection 77(7) of the Judicature Act. It makes clear that examinations may be conducted by practitioners licensed outside Ontario.

Subsection (2) is derived from subsections 77(1) and (5) of the Judicature Act. The new provision is not limited to proceedings in respect of bodily injury.

Since the new provision is not limited to personal injury actions, subsection (3) has been included to protect a party whose physical or mental condition has been put in issue by another party.

Subsection (4) is derived from subsections 77(2) and (3) of the Judicature Act.

The new Rules contain further provisions dealing with medical examinations. The Rules cover the matters dealt with in subsections 77(4) and (6) of the Judicature Act.

SECTION 118

This section is derived from paragraph 6 of section 18 of the Judicature Act. It also replaces section 24 of the Judicature Act.

SECTION 119

This is a new provision that deals with the consolidation of two or more proceedings that are pending in two or more different courts. It is similar to a provision in the new Rules that deals with the consolidation of two or more proceedings that are pending in the same court. These provisions could be used, for example, when a single incident results in a number of separate court proceedings in different courts. Since many of the issues will be the same in all the proceedings, it may be convenient to consolidate the proceedings.

SECTION 120

Subsection (1) replaces section 59 of the Judicature Act. It states the general principle that most actions in the Supreme and District Courts may be tried with a jury. The new Act does not make jury trials mandatory for actions of libel, slander, malicious arrest, malicious prosecution and false imprisonment. Like other actions, these actions may be tried with a jury if a jury notice is served under the new Rules.

Subsection (2) is derived mainly from subsection 60(4) of the Judicature Act. The new subsection attempts to list more specifically the actions that cannot be tried with a jury. Clause (2)(1) replaces section 58 of the Judicature Act. The new clause prohibits jury trials against municipalities, in the same way that section 15 of the Proceedings Against the Crown Act prohibits jury trials against the provincial government.

Subsection (3) makes clear that the court may order that an action be tried without a jury.

Subsection (4) is a new provision intended to serve as a bridge between subsections (2) and (3), which deal with the circumstances in which proceedings are tried without a jury, and the remaining provisions of the section, which deal with proceedings tried with a jury.

Clause (5)(a) is derived from section 64 and subsection 65(1) of the Judicature Act. There appears to be no difference between a special verdict and the giving of answers to specific questions. Therefore, the new provision does not mention special verdicts. At common law, a jury could give a general verdict even if the judge requested a special verdict. The new provision, like subsection 64(1) of the Judicature Act, permits the judge to require answers to specific questions. Section 15 of the Libel and Slander Act permits a jury to give a general verdict notwithstanding that the judge addressed specific questions to them. This specific provision will continue to prevail over the provisions of clause 120(5)(a) of the Courts of Justice Act.

Clause (5)(b) is derived from subsection 65(3) of the Judicature Act.

Subsection (6) is derived from section 62 of the Judicature Act.

Subsections (7) and (8) are derived from section 63 of the Judicature Act.

Subsection (9) is derived from subsection 65(2) of the Judicature Act. This provision is necessary to overrule the decision of the Supreme Court of Canada in Beach v. Healey, [1943] S.C.R. 272.

Subsection (10) replaces section 66 of the Judicature Act. The new provision alters the law, as recommended by the Uniform Law Conference of Canada in section 187 of the Uniform Evidence Act, so that the trier of fact determines whether there was reasonable and probable cause for instituting the prosecution.

SECTION 121

Subsection (1) is derived from subsection 35(1) of the Judicature Act. The new provision requires notice whenever the constitutional applicability of a statute is questioned, as well as the constitutional validity of a statute.

Subsection (2) replaces subsections 35(2) and (3) of the Judicature Act. The Rules of Civil Procedure will provide a form for the notice which will give more detail concerning the content of the notice. The new subsection also extends the period of notice from six days to ten days, subject to the court permitting a different period.

Subsection (3) is a new provision intended to make clear that the Attorney General of Canada and the Attorney General of Ontario are entitled to notice of any appeal in respect of a constitutional issue.

Subsection (4) is derived from subsection 35(4) of the Judicature Act.

Subsection (5) is derived from subsection 35(5) of the Judicature Act.

SECTION 122

This is a new provision that permits a proceeding, or a step in a proceeding, brought or taken before the wrong court, judge or officer, to be transferred or adjourned to the proper court, judge or officer. Without this provision, a person who mistakenly chooses the wrong forum may find that he has missed a time period and is too late to start again. The new section replaces section 17 of the County Courts Act.

SECTION 123

Subsection (1) is derived from section 134 of the Judicature Act. The new provision is intended to make clear that the set off is claimed by way of defence, not by way of counterclaim.

Subsection (2) is derived from subsection 135(1) of the Judicature Act. It also provides that a set off may be claimed in respect of debts that are owed in different capacities, a matter that is dealt with in part by section 134 of the Judicature Act.

The language in subsection 135(1) of the Judicature Act dealing with penalties, as well as subsection 135(2), has been deleted as unnecessary. Penalties are unenforceable because of the law of equity, not because of section 135.

Subsection (3) is derived from section 136 of the Judicature Act.

SECTION 124

Subsection (1) is derived from subsections 1(1) and (2) of the Matrimonial Causes Act. The new provision does not require an investigation in nullity proceedings. Nullity actions are very rare and, when they do occur, do not very often involve children. In the event that a nullity action does involve children, it will still be possible to obtain an Official Guardian's report under section 32 of the Children's Law Reform Act.

Subsections (2) to (6) are derived from subsections 1(3) to (7) of the Matrimonial Causes Act.

Subsection (7) is derived from subsection 1(9) of the Matrimonial Causes Act.

SECTION 125

This is a new provision intended to implement a recommendation of the Morden Subcommittee. They recommended that a defendant should be permitted to make a third party claim against his insurer, notwithstanding that the contract of insurance contains a "no action" clause that prevents the defendant from taking action against his insurer until judgment is obtained against the defendant. Without this provision, a defendant must suffer judgment and expose his property to execution before an action can even be commenced against the insurer based on the insurer's contractual liability to indemnify the defendant.

SECTION 126

This section is derived from section 61 of the Judicature Act. The new section states that, although an agreement as to the place of hearing is not binding if a motion to change the place of hearing is made, the agreement may be taken into account on the motion.

SECTION 127

This section replaces section 76 of the Judicature Act. The regulations under the Guarantee Companies Securities Act list the companies that are permitted to give security in court proceedings.

SECTION 128

This section is intended to implement two of the recommendations of the Bench and Bar Council's Committee on Tort Compensation. It will provide a statutory basis for orders that damages for injuries or death be paid periodically or be reviewed and revised. This section only applies if the consent of the affected parties is obtained. This section does not implement the Tort Compensation Committee's recommendation that, without consent, the court be permitted to order a defendant to pay any part of a judgment sum representing the cost of future care of an injured plaintiff to a person approved by the court. If a plaintiff is competent, he should be entitled to manage his own money. If he is not competent, the Mental Incompetency Act provides for the appointment of a committee who may handle his property.

SECTION 129

This section is derived from existing rule 259, which will not appear in the new Rules.

SECTION 130

This section is derived from section 139 of the Judicature Act.

SECTION 131

This section deals with the giving of decisions by a judge who retires or resigns and with the situation where a rehearing is required. Subsection (1) defines the persons to whom the section applies.

Subsection (2) is derived from subsections 11(1), 11(2) and 42(5) of the Judicature Act, section 19 of the County Judges Act and section 13 of the Unified Family Court Act. The time in which the decision can be given has been extended from eight weeks to ninety days.

Subsection (3) is derived from subsection 11(3) of the Judicature Act. It also permits a rehearing if the remaining judges are equally divided.

Subsection (4) is derived from subsection 30(1) of the County Courts Act. The new provision extends to judges of all courts, not just District Court judges.

Subsections (5) and (6) are intended to deal with delayed decisions.

Subsection (7) is derived from subsections 30(2) to (6) of the County Courts Act.

SECTION 132

This section is derived from section 132 of the Judicature Act. The new provision permits documents to be served on Sunday in cases of urgency. For example, there may be occasions where an urgent motion for an interim injunction must be made to stop an activity that is planned to take place on a Sunday. If the order is not obtained until late Saturday, it should still be possible

to serve the order on Sunday. The new section also implements the Ontario Law Reform Commission recommendation that "the Lord's Day" be replaced by "Sunday": Report on Sunday Observance Legislation (1970), p. 367.

SECTION 133

Subsection (1) states that the official languages of the courts in Ontario are English and French. Although subsection (2) provides that most proceedings are conducted in English, section 134 provides very significant rights to litigants who speak French.

Subsection (2) is derived from subsection 130(1) of the Judicature Act. The section is intended to state more clearly the existing practice of the courts. For example, documentary evidence that is not in the English language may be filed if it is accompanied by a translation of the document into the English language.

SECTION 134

This section replaces subsections 130(2) to (8) of the Judicature Act. Subsection (1) is derived from subsections 130(2) and (3) of the existing Act. The new provision specifically names the counties and districts that have been designated under clause 130(3)(a) of the existing Act.

Subsection 130(4) of the existing Act has been split into two subsections. Subsection (2) states that a party to a proceeding in a designated court who speaks the French language has the right to require that the hearing be conducted before a judge who speaks both the English and French languages. The right to a bilingual judge applies in both jury and non-jury trials. Subsection (3) states that a party to a jury trial who speaks the French language has, with the consent of all parties, the right to require the hearing to be conducted before jurors who speak both the English and French languages in designated courts in counties and districts referred to in clause (1)(a). Bilingual jury trials are not possible in other counties or districts (i.e., those designated under subclause (1)(b)), because the number of bilingual persons in those areas is not large enough to prepare a bilingual jury roll of sufficient size.

Subsection (4) lists the consequences of exercising the right to a bilingual trial. Clause (4)(a) is derived from subsection 130(7) of the existing Act. It permits both the English and French languages to be used as languages of record at the hearing of the proceeding.

Clause (4)(b) is derived from clause 130(6)(a) of the existing Act.

Clauses (4)(c) and (d) are derived from clause 130(6)(b) of the existing Act. Clause (4)(c) provides that, where the right to a bilingual trial is exercised, English and French can both be used as languages of record in examinations for discovery and cross-examinations on an affidavit. Clause (4)(d) permits the court to order that English and French be used as languages of record in other steps in the proceeding (e.g. the hearing of motions).

Clause (4)(e) is a new provision that permits, with the consent of all parties, pleadings and other documents to be filed in the French language only.

Clause (4)(f) is a new provision that permits the reasons for judgment to be in either the English or French language.

Clause (4)(g) provides that a party or counsel who is not bilingual may request the court to provide interpretation and translation services.

Clause (5)(a) corresponds to that part of subsection 130(4) of the existing Act which provides for bilingual appeal hearings where the trial was a bilingual trial.

Clause (5)(b) permits a party or counsel who is not bilingual to obtain from the court a translation of any part of the transcript of the trial that is in the language he or she does not speak.

Subsection (6) is derived from subsection 130(8) of the existing Act. The new provision also extends to the Provincial Court (Family Division) where it is a designated court.

Because of subsection 130(1) of the existing Act, police officers are reluctant to issue process in the French language. Subsection (7) is intended to overcome this problem by permitting criminal process and, in areas where the Provincial Offences Court is a designated court, provincial offences process to be filed in the French language.

Subsection (8) provides that a document or process referred to in subsection (6) or (7) will be translated, on request, by the court.

Subsection (9) is a new provision which provides that, in courts that are not designated courts, and in designated court proceedings not covered by subsection (4), the court will provide an interpreter for a party acting in person or witness who makes submissions or gives evidence in the French language. In these circumstances, it is the English translation that will form part of the record.

Subsection (10) provides that the rights given by this section also apply to corporations, partnerships and sole proprietorships.

Subsection (11) permits the Lieutenant Governor in Council to make regulations prescribing procedures for the purpose of this section. For example, it is intended that the regulations will permit a party to exercise his right to a bilingual trial simply by filing a requisition with the appropriate court office.

SECTION 135

This section and the three sections that follow replace sections 36 and 37 of the Judicature Act, which deal with prejudgment and postjudgment interest. Clause (1)(a) replaces subsections 36(1) and (2) of the Judicature Act. The new Act bases its interest provisions on the bank rate, instead of on the prime rate. Difficulties have been encountered using the prime rate because the Bank of Canada Review is not published until some time after the prime rates are set. The bank rate, however, can be determined immediately.

Clause (1)(b) defines "date of the order", a term that is used throughout the interest sections. It is intended to make clear that the relevant date for the purpose of calculating prejudgment and postjudgment interest is the date the order is made, notwithstanding that it is not entered or enforceable on that date or that the order is varied on appeal. The definition also provides that the relevant date for determining interest rates when a reference is ordered is the date the report on the reference is confirmed, since that is the date that the exact amount owing will become known.

Clause (1)(c) fixes the postjudgment interest rate for each quarter. The rate will be equal to the bank rate at the end of the first day of the last month of the quarter preceding the date of the order, rounded to a whole number if the bank rate includes a fraction, plus one percent. This means that the postjudgment interest rate will always be a whole number, which will make calculations with the rate easier. The postjudgment interest rate will be between one and two points above the bank rate, and will average 1.5 points above the bank rate. This approximates the prime rate. A similar calculation is made in clause (1)(d) for the prejudgment interest rate. Clause (1)(e) defines "quarter".

Subsection (2) requires the Registrar of the Supreme Court to determine the prejudgment and postjudgment interest rates for each quarter. He must also publish the rates in the Ontario Gazette. For convenience, the Gazette will also contain the rates determined under this subsection (i.e. those rates determined after the Courts of Justice Act comes into force) for the 10-year period preceding publication.

SECTION 136

This section is derived from subsections 36(3), (4) and (5) of the Judicature Act.

Subsection (4) provides that this section does not apply to proceedings commenced before the section comes into force. Those proceedings will continue to be governed by the old provisions of the Judicature Act.

SECTION 137

Subsection (1) is derived from subsection 37(1) of the Judicature Act. The new provision makes clear that postjudgment interest runs on costs fixed by the court from the date of the order.

Subsection (2) clarifies the calculation of postjudgment interest on orders that provide for periodic payments.

Subsection (3) is a new provision intended to clarify the application of postjudgment interest to orders based on orders made outside Ontario, and to orders made outside Ontario but filed in Ontario for enforcement (e.g. under the Reciprocal Enforcement of Maintenance Orders Act).

Subsection (4) is a new subsection that clarifies the application of postjudgment interest to costs assessed under an order. The new subsection is also intended to fit with provisions in the new Rules that, in some cases, permit costs to be assessed without an order.

Subsection (5) is a new provision that corresponds to a similar provision in the prejudgment interest section. If the parties have agreed on the interest, the agreement will prevail.

Subsection (6) provides that this section does not apply to orders made before it comes into force. Those orders will continue to be dealt with under section 37 of the Judicature Act.

SECTION 138

This section is derived from subsections 36(6) and 37(2) of the Judicature Act.

SECTION 139

Subsection (1) is derived from subsection 80(1) of the Judicature Act. The new Rules will also contain provisions regulating the awarding of costs.

Subsection (2) is derived from subsection 80(5) of the Judicature Act.

SECTION 140

This provision is derived from subsections 42(6) and 46(5) of the Judicature Act.

SECTION 141

This section is derived from section 27 and subsection 80(4) of the Judicature Act. The new provision requires leave to be obtained from the court to which the appeal is to be taken.

SECTION 142

Subsection (1) is derived from subsection 29(1) of the Judicature Act and section 33 and subsection 39(1) of the County Courts Act.

Subsection (2) is a new provision intended to permit the appeal court to prevent prejudice pending the appeal.

Subsection (3) is a new provision clarifying that an appeal court's powers are not restricted by interlocutory orders made earlier in the proceeding.

Subsection (4) is derived from subsection 29(2) of the Judicature Act and section 38 of the County Courts Act.

Subsection (5) is derived from subsection 29(3) of the Judicature Act.

Subsection (6) is derived from subsection 30(1) of the Judicature Act.

Subsection (7) is derived from subsection 30(2) and section 31 of the Judicature Act.

SECTION 143

Subsections (1) and (2) are derived from sections 82 and 117 of the Judicature Act. Subsection (1) is a more direct enunciation of the principle that court hearings should generally be open to the public. Subsection (2) is believed to represent a more realistic test for excluding the public than the "public decency and morals" test in section 82 of the existing Act.

Subsection (3) is a new provision designed to reinforce the principle that the public is entitled to be informed about proceedings in courts.

SECTION 144

This section is derived from section 67 of the Judicature Act. The section has been expanded to prohibit unauthorized audio recordings of court proceedings. Otherwise, the slight changes in language do not change the meaning or scope of the section.

Subsection (2) is included to clarify the law respecting the taking of notes and sketches. On a strict interpretation of subsection (1), a sketch could be held to be a "record capable of producing visual representations". Subsection (2) clarifies that this is not the intention.

SECTION 145

Subsection (1) is derived from subsection 129(4) of the Judicature Act. The new provision permits any person to see documents filed in civil proceedings in courts, not just "persons affected". The new section makes subsection 129(2) of the Judicature Act unnecessary.

Subsection (2) provides authority for a court to order that certain documents be kept confidential.

Subsection (3) is derived from subsection 129(1) of the Judicature Act.

Subsection (4) is derived from subsections 129(3) and (4) of the Judicature Act.

SECTION 146

This section is derived from paragraph 8 of section 18 of the Judicature Act.

SECTION 147

This is a new provision intended to implement a recommendation of the Morden subcommittee. It abolishes the rule that judgment against, or a release of, a person who is jointly liable prevents judgment from being obtained against any other joint wrongdoer. The provision will make it unnecessary for the new Rules to incorporate the joint liability provisions of existing rules 54 and 65.

Subsection (2) is a complementary provision intended to discourage unnecessary proceedings.

SECTION 148

This section is derived from the Vexatious Proceedings Act. Subsection (1) expands the grounds on which an order may be made against a vexatious litigant to include conducting a proceeding in a vexatious manner. In Foy v. Foy (No.2) (1979), 26 O.R. (2d) 220, a majority of the Court of Appeal held that, although one of the parties had brought "a myriad of interlocutory proceedings", the language of the existing Act was not broad enough to permit an order to be made on that basis. The new provision is intended to overcome that problem.

Subsection (2) is derived from subsection 1(2) of the Vexatious Proceedings Act.

Subsection (3) indicates how a person against whom an order has been made may seek leave to institute or continue a proceeding.

Clause (4)(a) is derived from the concluding words of subsection 1(1) of the Vexatious Proceedings Act.

Clauses (4)(b), (c), (d) and (e) are new provisions. Clause (b) is intended to prevent a person against whom an order has been made from harrassing others by instituting applications for leave that also claim other relief. The only other relief permitted by clause (b) is an order rescinding the original order. The rescission order would be made under clause (c). Clause (d) permits the Attorney General to appear on the application for leave. Clause (e) prevents a vexatious litigant from endlessly appealing a refusal to grant leave.

Subsection (5) preserves the authority of the courts to stay or dismiss a proceeding as an abuse of process.

SECTION 149

This is a new provision intended to make it clear that orders of a court with limited territorial jurisdiction are enforceable throughout Ontario.

SECTION 150

This provision is derived from section 142 of the Judicature Act.

SECTION 151

The Criminal Code and the Provincial Offences Act contain specific provisions dealing with the enforcement of fines and recognizances under those Acts. However, there is a small category of fines and recognizances that are not dealt with by those Acts. For example, a fine imposed for contempt is not enforceable under the Criminal Code or the Provincial Offences Act. These fines are enforced under the Estreats Act, an archaic statute that is not widely known. This provision replaces the Estreats Act and provides a straightforward method of enforcing fines, bonds and recognizances that are not enforced under other statutes.

SECTION 152

This section is derived from section 113 of the Judicature Act.

SECTION 153

This section is derived from sections 12 and 94 of the Judicature Act, clause 21(1)(d) of the Unified Family Court Act, section 3 of the Surrogate Courts Act and section 5 of the Small Claims Courts Act.

SECTION 154

This section is derived from section 1 of the Dominion Courts Act. References to the Supreme Court of Canada have been deleted to accord with amendments that have been made to the Supreme Court Act (Canada) since the Dominion Courts Act was first enacted.

SECTION 155

Subsection (1) provides that the Courts of Justice Act will apply to all proceedings, whether commenced before or after the Act comes into force.

Subsection (2) permits the court in which a proceeding was commenced to order that the proceeding be continued under the legislation and rules that existed before the coming into force of the Courts of Justice Act or to make any other order that is considered just.

SECTION 156

This is a transitional provision that relates to the creation of the District Court and the assumption by the District Court of the jurisdiction formerly exercised by the county and district courts, the county and district court judges' criminal courts and the courts of general sessions of the peace.

SECTION 157

This is a transitional provision related to the amalgamation of the provincial courts of the counties and districts into four province-wide courts.

SECTION 158

This provision is related to the establishment of the new province-wide courts. It is intended to indicate that, where previous legislation gave jurisdiction to a court of a particular county or district, that jurisdiction will continue to be exercised in that county or district.

SECTION 159

This section provides a short table showing some of the major changes in terminology being made by the new Act and new Rules. The section deems references to the old terms to be references to the new terms.

SECTION 160

This section repeals an unnecessary rule-making power. Section 93 of the Courts of Justice Act provides sufficient authority to regulate procedure in court proceedings under the Arbitrations Act.

SECTION 161

This section is one of several provisions that implement a recommendation made in the 1973 Ontario Law Reform Commission Report on the Administration of Ontario Courts, Part II, p. 94. The Commission recommended that the office of clerk of the peace, now held by the Crown Attorney, be abolished and that the duties of the clerk of the peace be performed by other officials. This section amends the Bailiffs Act so that the functions of the clerk of the peace under that Act (making recommendations on the appointment of private bailiffs and investigating complaints against private bailiffs) will be transferred to the sheriff.

The federal government will be asked to amend the Ontario provisions of the Schedule to Part XXII of the Criminal Code (Canada), which contain the only federal reference to the clerk of the peace, so that they refer to the local registrar of the District Court of Ontario.

SECTION 162

Section 68 of the Children's Law Reform Act deals with the circumstances in which court proceedings under that Act may be closed to the public. In future, this matter will be dealt with by section 143 of the Courts of Justice Act.

SECTION 163

The provisions of the Constitutional Questions Act, repealed by this section, appear as section 18 of the Courts of Justice Act.

SECTION 164

This section amends the Construction Lien Act, 1983 to make use of the terminology and procedures of the new Rules. In particular, instead of appealing the report on a reference to the Divisional Court, a motion to oppose confirmation of the report may be made under the Rules to a judge.

SECTION 165

This section amends the Coroners Act so that the Crown attorney, instead of the clerk of the peace, will be notified of the appointment of coroners.

SECTION 166

This section abolishes the county and district court judges' criminal courts. The federal government will be asked to give the jurisdiction of these courts to the District Court of Ontario.

SECTION 167

Part II of the Courts of Justice Act will replace the County Courts Act.

SECTION 168

The provisions of the County Judges Act are incorporated in Part II of the Courts of Justice Act.

SECTION 169

Subsection (1) repeals the provision that now makes the Crown attorney the clerk of the peace.

Subsection (2) replaces references to the court of general sessions of the peace and the county or district court judge's criminal court with a reference to the District Court.

Subsection (3) repeals a provision that, since the transfer of responsibility over the administration of justice from the municipalities to the provincial government, is now obsolete.

Subsections (4) and (5) reflect the fact that the Crown attorney will no longer be acting as clerk of the peace.

SECTION 170

Section 19 of the Developmental Services Act deals with the service of documents on residents of facilities for the developmentally handicapped. The provision is being repealed because the issue of service will be dealt with in the new Rules.

SECTION 171

This is another section that is consequent on the transfer of duties from the clerk of the peace to other officials.

SECTION 172

Section 1 of the Dominion Courts Act is replaced by section 154 of the Courts of Justice Act. The use of Ontario facilities by federally-established courts, which is dealt with in section 2 of the Dominion Courts Act, will be dealt with in future by agreements between the federal and provincial government.

SECTION 173

The rule-making authority in section 93 of the Courts of Justice Act is sufficient to provide for procedures in proceedings under the Estates Administration Act.

SECTION 174

With the enactment of section 151 of the Courts of Justice Act, the Estreats Act will no longer be necessary.

SECTION 175

Subsection (1) implements a request of the Morden Subcommittee. It is intended to make clear that the transcript of an examination is presumed to be accurate unless the contrary is shown.

Subsection (2) implements another recommendation of the Morden Subcommittee. It is intended to permit courts outside Ontario to take commission evidence in Ontario for purposes other than use at trial. The new Rules of Civil Procedure will permit Ontario courts to request courts in other jurisdictions to summon a witness for the purpose of taking evidence for an Ontario proceeding where the evidence will not be used at trial.

SECTION 176

Subsection (1) replaces sections 4 and 5 of the Replevin Act with an amendment to the Execution Act intended to clarify the sheriff's power to enter premises to enforce court orders. The need for clarification was pointed out by the Ontario Law Reform Commission in its 1981 Report on the Enforcement of Judgment Debts and Related Matters, Part II, p. 110. The provision departs from the Commission's recommendation by requiring specific authorization before the sheriff may use force to enter a dwelling.

Subsection (2) repeals an obsolete section setting fees. Fees will be provided for in the regulations under the Administration of Justice Act.

Subsection (3) transfers existing rule 551 into the Execution Act. It also implements the recommendation of the Ontario Law Reform Commission that a charging order should no longer be required to enforce a judgment against a partner's interest in partnership property and profits. The Commission recommended that this interest be available to satisfy a personal judgment against a partner only by means of receivership: Report on the Enforcement of Judgment Debts and Related Matters (1981), Part II, p. 256.

SECTION 177

The provisions of the Extra-Judicial Services Act, which will be repealed by this section, appear in sections 97 and 98 of the Courts of Justice Act.

SECTION 178

Subsection 2(6) of the Family Law Reform Act deals with the exclusion of the public from court proceedings under that Act. In future, this issue will be dealt with under section 143 of the Courts of Justice Act.

Section 30 of the Family Law Reform Act deals with the attachment of wages. In future, this matter will be dealt with by the garnishment provisions of the new Rules.

SECTION 179

This is a consequential amendment related to the abolition of the courts of general sessions of the peace.

SECTION 180

The federal government will be asked to amend the definition of "court of criminal jurisdiction" in section 2 of the Criminal Code so that it includes, in Ontario, the District Court. This will transfer the jurisdiction of the courts of general sessions of the peace to the District Court, making the General Sessions Act unnecessary.

SECTION 181

This is a consequential amendment related to the abolition of the courts of general sessions of the peace.

SECTION 182

This section amends a provision of the Highway Traffic Act to take account of a new procedure, called a "crossclaim", created by the new Rules.

SECTION 183

Subsection (1) amends the Interpretation Act to replace section 131 of the Judicature Act. The new section is phrased in broader terms because of some old common law indicating that appointments made by the Sovereign terminate when the Sovereign dies. The new section is not limited to court proceedings.

Subsection (2) repeals sections 28 and 29 of the Interpretation Act. Section 28 states that appeals to the Court of Appeal shall be made in the manner prescribed by the rules. This section has been deleted as unnecessary. Section 29 of the Interpretation Act states that, where an application to a court is permitted by an Act, the application may be made by originating notice. The new Rules will provide for applications permitted by statute to be made by issuing a notice of application, so section 29 will no longer be necessary.

Subsections (3) and (4) replace existing references to the Judicature Act with references to the Courts of Justice Act.

SECTION 184

This section amends the Interprovincial Subpoenas Act to clarify that it applies to examinations conducted out of court during the course of a court proceeding (e.g. examinations for discovery).

SECTION 185

With the abolition of persona designata by section 95 of the Courts of Justice Act, the Judges' Orders Enforcement Act will no longer serve any purpose.

SECTION 186

Subsection (1) repeals the Judicature Act.

Subsection (2) abolishes the Suitors Fee Fund Account established by section 114 of the Judicature Act. In light of the availability of legal aid, the Fund is no longer used. Subsection (2) requires the money still in the Fund (approximately \$2,600) to be paid into the Consolidated Revenue Fund.

SECTION 187

The first part of section 11 of the Judicial Review Procedure Act is unnecessary since statutory provisions prevail over rules. The second part of the section is unnecessary because it adds nothing to the general power

to make rules contained in section 93 of the Courts of Justice Act.

SECTION 188

Subsections (1), (3), (4), (5), (7) to (12) and (15) delete references in the Juries Act to courts of general sessions of the peace, since the jurisdiction of those courts will be assumed by the District Court.

Subsection (2) replaces a reference to the Judicature Act with a reference to the corresponding provision in the Courts of Justice Act.

Subsection (6) changes an unnecessary and expensive registered mail requirement to permit ordinary mail.

Subsections (13) and (14) delete references in the Juries Act to the clerk of the peace. The clerk of the peace no longer has any duties under that Act.

SECTION 189

Subsection 135(1) of the Land Titles Act prevents a certificate of pending litigation from being registered in respect of land governed by that Act. A caution may be obtained but only on the grounds set out in the Land Titles Act. These provisions are being repealed, since they are inconsistent with subsection 115(2) of the Courts of Justice Act.

SECTION 190

Section 11 of the Libel and Slander Act permits a defendant to a libel action to pay money into court and provides that the payment has the same effect as payment into court in other cases. The new Rules will delete the existing rules dealing with payment into court and will substitute an offer to settle procedure. The same offer to settle procedure would be available in libel actions.

SECTION 191

This section repeals the definition of "action" in the Marine Insurance Act so that the more complete definition in the Courts of Justice Act will apply.

SECTION 192

Section 1 of the Matrimonial Causes Act, repealed by this section, is replaced by section 124 of the Courts of Justice Act.

Section 2 of the Matrimonial Causes Act, which deals with appeals in actions for the annulment of a marriage, is not being re-enacted. The same rules that apply to all other appeals will apply to nullity actions.

Section 3 of the Act, which deals with rules of court for matrimonial causes, is not being re-enacted. Rules of court may be made under the authority contained in the Courts of Justice Act.

Section 4 of the Act, which creates the office of Her Majesty's Proctor, is not being re-enacted. Under the new Rules, the duties of the Queen's Proctor will be exercised by the Attorney General.

SECTION 193

Section 45 of the Mental Health Act deals with service of documents on patients in psychiatric facilities. This matter will be covered by the new Rules.

SECTION 194

The Morden Subcommittee recommended the repeal of the provisions in the Mental Incompetency Act that require an order of a county or district court judge to be confirmed by a Supreme Court judge. This section implements that recommendation.

SECTION 195

This section amends provisions of the Mortgages Act dealing with the assessment of costs when a power of sale

is exercised to reflect the fact that, under the Courts of Justice Act and the new Rules, there will no longer be any officers called "local masters". The assessments will be done in future by assessment officers.

SECTION 196

Section 13 of the Municipal Arbitrations Act adds nothing to the general rule-making authority of section 93 of the Courts of Justice Act.

SECTION 197

Section 1 of the Negligence Act defines "action" to include a counterclaim. However, it does not include a crossclaim or a third party claim, which are both "actions" in the new Courts of Justice Act and the new Rules. This section repeals the definition section in the Negligence Act, so that the interpretations used for the Courts of Justice Act can be applied to the Negligence Act.

SECTION 198

This section is intended to resolve a procedural problem in appeals to the Divisional Court under section 95 of the Ontario Municipal Board Act. See Re Schutz and Regional Municipality of Durham (1977), 15 O.R. (2d) 795 (Div. Ct.).

SECTION 199

Subsection (1) amends the Partition Act to make clear that an order for partition may be sought in either an action or an application.

Subsections (2) to (4) amend language in the Partition Act to conform with the new terminology of the Courts of Justice Act.

Subsection (5) amends section 7 of the Partition Act to make clear that it applies only to applications.

SECTION 200

This section repeals a provision of the Police Act that makes the Commissioner of the Ontario Provincial Police Force an ex officio provincial judge.

SECTION 201

This section amends the Private Sanitaria Act so that the Crown attorney may continue to perform his functions under that Act.

SECTION 202

Subsection (1) corrects a typographical error in the Revised Statutes of 1980.

Subsection (2) amends section 14 of the Proceedings Against the Crown Act so that service of documents on the Crown will conform with a provision in the new Rules dealing with service of documents on the Attorney General.

Subsection (3) amends section 26 of the Proceedings Against the Crown Act to permit settlements of court proceedings to be paid out of the Consolidated Revenue Fund without the need to obtain a court order.

SECTION 203

Most of the provisions of the Provincial Courts Act will be incorporated into Part IV of the Courts of Justice Act. However, there are several provisions of the Provincial Courts Act, dealing with observation and detention homes, that will not be included in the Courts of Justice Act. These provisions are administered by the Ministry of Community and Social Services. This section changes the name of the Provincial Courts Act to the Juvenile Observation and Detention Homes Act and repeals the provisions of that Act that are no longer required.

SECTION 204

The provisions of the Provincial Court (Civil Division) Act are incorporated in sections 79 to 87 of the Courts of Justice Act.

SECTION 205

Subsection (1) corrects a provision of the Provincial Offences Act that, because of the definition of "prescribed" in that Act, appears to suggest that rules of court may prescribe limitation periods. This was not the intention.

Subsections (2) and (3) are intended to make clear that clause 17(3)(b) of the Courts of Justice Act does not provide for an appeal from a decision of a single judge of the Court of Appeal under section 114 or 122 of the Provincial Offences Act.

SECTION 206

The Public Officers' Fees Act deals with officers involved in the administration of justice who are paid by fees. There are very few such officers remaining. Those that do remain are dealt with by other legislation or regulations. Therefore, the Public Officers' Fees Act is being repealed.

SECTION 207

The Certification of Titles Act and provisions in the new Rules make the Quieting Titles Act unnecessary. Therefore, the Act is being repealed and the new Rules will not contain any rules dealing with quieting titles.

SECTION 208

Section 7 of the Reciprocal Enforcement of Judgments Act adds nothing to the rule-making authority contained in the Courts of Justice Act.

SECTION 209

The main provisions of the Replevin Act, repealed by this section, are dealt with in subsections 116(1) and 176(1) of the Courts of Justice Act.

SECTION 210

This section repeals the definition of "action" in the Sale of Goods Act so that the more complete definition in the Courts of Justice Act will apply.

SECTION 211

Subsection (1) replaces an obsolete provision in the Sheriffs Act with a section derived from section 122 of the Judicature Act. The new provision states that, except where a statute provides otherwise, orders of a court enforceable in Ontario shall be directed to the sheriff for enforcement. Subsection 37(2) of the Children's Law Reform Act is an example of a provision permitting orders to be directed to persons other than the sheriff. The subsection permits an order to direct a police force to locate, apprehend and return a child who is being unlawfully withheld to the person entitled to custody of the child.

Subsection (2) repeals an obsolete provision. Fees for duties performed by sheriffs are prescribed by regulations under the Administration of Justice Act.

Subsection (3) is amended to ensure that the sheriff's office will be open at the same time as the court offices.

Subsection (4) is a consequential amendment related to the abolition of the courts of general sessions of the peace.

SECTION 212

The key provisions of the Small Claims Courts Act are incorporated in sections 79 to 87 of the Courts of Justice Act. The many procedural provisions of the Small Claims Courts Act will be dealt with in new rules for the Provincial Court (Civil Division).

SECTION 213

Subsection (1) transfers existing rule 692 to the Solicitors Act.

Subsection (2) transfers existing rule 675 to the Solicitors Act.

Subsection (3) repeals section 14 of the Solicitors Act. This section adds nothing to the general rule-making authority in section 93 of the Courts of Justice Act.

Subsection (4) amends subsection 35(3) of the Solicitors Act to replace a reference to a Judicature Act provision with the corresponding provisions of the Courts of Justice Act.

Subsection (5) transfers existing rule 696 to the Solicitors Act. The Ontario Law Reform Commission recommended that the power to give a solicitor a charge on property recovered or preserved through his efforts should have a statutory basis: Report on the Solicitors Act (1973), pp. 36 - 37.

SECTION 214

Section 3 of the Surrogate Courts Act, repealed by this section, is replaced by section 153 of the Courts of Justice Act.

Subsection (2) increases the fine that may be imposed for contempt by a surrogate court to \$10,000. This change corresponds to a similar change made for the District Court in subsection 34(2) of the Courts of Justice Act.

Section 10 of the Surrogate Courts Act is replaced by section 94 of the Courts of Justice Act.

Subsection (4) amends section 12 of the Surrogate Courts Act to include part of section 85 of the Judicature Act.

Subsection (5) repeals several provisions of the Surrogate Courts Act. Sections 13, 16 and 19 of the Act are replaced by, respectively, section 94 of the Courts of Justice Act, a provision in the new Rules and subsection 99(4) of the Courts of Justice Act.

Subsection (6) replaces the rule-making authority for the surrogate courts with a provision modelled on section 93 of the Courts of Justice Act. The new provision also states that the Rules of Civil Procedure will apply to surrogate courts, except in so far as the rules of the surrogate courts otherwise provide.

SECTION 215

Subsections (1) and (2) amend the Trustee Act to replace references to the Registrar of the Supreme Court with references to the Surrogate Clerk for Ontario.

Subsection (3) repeals provisions of the Trustee Act that will appear in the new Rules.

SECTION 216

The provisions of the Unified Family Court Act are incorporated in Part III of the Courts of Justice Act.

SECTION 217

The provisions of the Vexatious Proceedings Act, repealed by this section, are dealt with in section 148 of the Courts of Justice Act.

SECTION 218

This section repeals the definition of "action" in the Warehouse Receipts Act so that the more complete definition in the Courts of Justice Act will apply.

SECTION 219

If forms are required for court proceedings under the Woodmen's Lien for Wages Act, they may be prescribed under section 93 of the Courts of Justice Act.

SECTION 220

This section provides that the Courts of Justice Act will come into force on proclamation. The date depends on two major factors. The new Rules of Civil Procedure must be completed and approved by the Rules Committee and, after this is done, there will be a period of several months before they come into force so that members of the legal profession can learn the new provisions. Second, federal amendments will be required to implement the new District Court of Ontario.

SECTION 221

This section provides the short title.

